SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 606

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND HYGRADE FOOD PRODUCTS CORPORATION

No. 607

THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND HYGRADE FOOD PRODUCTS CORPORATION

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

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IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Equity No. 78–351

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, et al.,

vs.

UNITED STATES OF AMERICA et al.

PRÆCIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the District Court of the United States for the Southern District of New York:

Please prepare a transcript of record in the above entitled cause on appeal to the Supreme Court of the United States, including therein the folliowing:

(1) Amended bill of complaint or petition, which should include Exhibits 1, 2, 3 and 4 which are attached thereto.
(2) Answer of the United States of America.
(3) Answer of Interstate Commerce Commission.
(4) Order to show cause dated September 4, 1934.
(6) Intervening petition of Union Stock Yard and Transit Company of Chicago.
(7) Order granting to Union Stock Yard and Transit Company of Chicago leave to intervene.
(8) Intervening petition of Hygrade Food Products Corporation.
(9) Order granting to Hygrade Food Products Corporation leave to intervene.
(10) Answer of Hygrade Food Products Corporation.
(11) Narrative statement of evidence.
(12) Opinion of the District Court.
(13) Final decree of the District Court.
(14) Notice of application for order allowing appeal.
(15) Petition for appeal.

(16) Assignment of errors.

[fol. 3] (17) Statement of basis on which Supreme Court of the United States has jurisdiction to review decree on appeal.

(18) Motion for order staying the order of the Interstate Commerce Commission pending appeal and decision thereon.

(19) Order allowing appeal.

(20) Order staying the order of the Interstate Commerce Commission for thirty days.

(21) Notice served under Paragraph 2 of Rule 12 of the Supreme Court of the United States.

(22) Citation on appeal.

(23) Undertaking or bond on appeal.

(24) Notice of motion for order of severance.

(25) Motion for order of severance.

(26) Order granting severance.

(27) Notice of lodgement in Clerk's office of narrative statement of evidence., to be included in the transcript of record on appeal and of appeals for an order approving said narrative statement of evidence and providing for the certification of origial exhibits to the Supreme Court of the United States.

(28) Order approving the narrative statement of evidence and providing for the certification of original exhibits to the Supreme Court of the United States.

(29) Stipulation with respect to narrative statement of evidence and certification of original exhibits to the Supreme Court of the United States.

(30) Copy of order signed by the Hon. Harlan F. Stone, Justice of the Supreme Court of the United States, staying the order of the Interstate Commerce Commission made on July 2, 1934 during the pendency and until the determination by the Supreme Court of the United States of the appeal herein.

(31) Copy of stay bond.

(32) This præcipe for transcript of record.

Frank H. Towner, Counsel for Petitioners (Appellants).

[fol. 4] Service of the foregoing præcipe and receipt of a copy thereof are hereby admitted and acknowledged upon the dates respectively set opposite our names.

December 15,. 1934.

Elmer B. Collins, for United States of America.

December 15th, 1934.

J. Stanley Payne, for Interstate Commerce Commission.

December 15th, 1934.

Hornblower, Miller, Miller & Boston, for Hygrade Food Products Corporation.

[fol. 5] [File endorsement omitted.]

[fol. 6] In United States District Court for the Southern District of New York

[Title omitted]

Amended Petition—Filed Sept. 4, 1934.

To the Honorable the Judges of the District Court for the Southern District of New York:

Your petitioners, The Atchison, Topeka and Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; The Baltimore and Ohio Chicago Terminal Railroad Company; The Chesapeake and Ohio Railway Company; The Alton Railroad Company; Charles M. Thomson, as trustee of the railways and property of Chicago and Eastern Illinois Railway Company; Chicago and Erie Railroad Company; Chicago and North Western Railway Company; Chicago, Burlington and Quincy Railroad Company; Chicago Great Western Railroad Company; Chicago, Indianapolis and Louisville Railway Company; Chicago Junction [fol. 6½] Railway (The Chicago River and Indiana Railroad Company, Lessee); Chicago, Milwaukee, St. Paul and Pacific Railroad Company; The Chicago River and Indiana Railroad Company; Frank O. Lowden, James E. Gorman and Joseph B. Fleming, as trustees of the railways and property of The Chicago, Rock Island and Pacific Railway Company and The Chicago, Rock Island and Gulf Railway

Company; Chicago Saint Paul, Minneapolis and Omaha Railway Company; The Cleveland, Cincinnati, Chicago and St. Louis Railway Company (The New York Central Railroad Company, Lessee); Illinois Central Railroad Company; The Michigan Central Railroad Company (The New York Central Railroad Company, Lessee); Minneapolis, Saint Paul & Sault Ste. Marie Railway Company; The New York Central Railroad Company; The New York, Chicago and Saint Louis Railroad Company; The Pennsylvania Railroad Company; and Norman B. Pitcairn and Frank C. Nicodemus, Jr., as receivers of the railways and property of Wabash Railway Company, bring this action against The United States of America (hereinafter called the "United States") and the Interstate Commerce Commission (hereinafter called the "Commission") for the purpose of enjoining, setting aside, annulling and suspending a certain order of said Commission.

Petitioners respectfully set forth and allege the following facts as constituting their cause of action:

(1) All of the petitioners, except Charles M. Thomson, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, as trustees, and Norman B. Pitcairn and Frank C. Nicodemus, Jr., as receivers, are duly organized corporations and common carriers by railroad subject to the Interstate Commerce Act and operate lines of railroad in the states [fol. 7] of Illinois, Indiana, Iowa, and elsewhere. The Alton Railroad Company was the purchaser at foreclosure sale of all the railways and properties of The Chicago and Alton Railroad Company, a corporation, which were operated from August 30, 1922, until July 18, 1931, by William W. Wheelock and William G. Bierd, as receivers thereof, and as such purchaser has acquired all the right, title and interest of said railroad company and said receivers in and has succeeded to all their rights, duties and obligations with respect to the subject matter of this suit. Petitioners, Charles M. Thomson, as trustee of the railways and property of Chicago and Eastern Illinois Railway Company; and Frank O. Lowden, James E. Gorman and Joseph B. Fleming, as trustees of the railways and property of The Chicago, Rock Island and Pacific Railway Company and The Chicago, Rock Island and Gulf Railway Company, were appointed and qualified as such trustees in proceedings pending in

the United States District Court for the Northern District of Illinois, Eastern Division, under Section 77 of the bankruptcy laws of the United States and are now acting as such trustees of the railways and properties of said companies. Petitioners, Norman B. Pitcairn and Frank C. Nicodemus, Jr., as receivers of the railways and property of Wabash Railway Company, were appointed and qualified as such receivers in proceedings pending in the United States District Court for the Eastern District of Missouri and are now acting as such receivers. Petitioners Charles M. Thomson, Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Norman B. Pitcairn and Frank C. Nicodemus, Jr., as such trustees and receivers, also operate lines of railroad in Illinois, Indiana, Iowa and elsewhere, and as such are subject to the Interstate Commerce Act. All of petitioners except The Baltimore and Ohio Chicago Ter-
[fol. 7½] minal Railroad Company, The Chicago River and Indiana Railroad Company, and Chicago Junction Railway, transport live stock in line haul service to and from Chicago. Petitioners The Baltimore and Ohio Chicago Terminal Railroad Company, The Chicago River and Indiana Railroad Company, and Chicago Junction Railway operate lines of railroad in and around Chicago, and perform only switching service on traffic handled by them. The defendant United States is sued pursuant to express authority of the Congress of the United States as provided in an act approved October 22, 1913, known as the "Urgent Deficiency Appropriations Act" (38 Stat. L. 219; Chap. 32, Title 28, Sections 43 to 48, United States Code 1926). The Commission is a commission existing under and by virtue of the Interstate Commerce Act and is specifically charged with the administration and enforcement of the provisions of said act. The order of the Commission complained of relates to transportation and to a matter complained of in a petition filed with the Commission by Hygrade Food Products Corporation and designated on the docket of the Commission as "No. 24375, Hygrade Food Products Corporation v. The Atchison, Topeka and Santa Fe Railway Company, et al.". The said Hygrade Food Products Corporation, upon whose petition said order was made, is a corporation of the State of New York and is a resident of the Southern District of New York.

(2) Since 1865, The Union Stock Yard and Transit Company of Chicago (hereinafter called the "Yards Company") has operated in the City of Chicago a stockyards (hereinafter called the "stockyards"), open to all, to and from which shipments of live stock of all classes and descriptions are made and at which such live stock is fed, watered, weighed and otherwise cared for, and bought and sold. The [fol. 8] stockyards is served directly only by the rails of petitioner, Chicago Junction Railway. All other of your petitioners serve the stockyards with their own power, operating their trains thereto and therefrom over the rails of petitioner, Chicago Junction Railway under contract arrangements. Hygrade Food Products Corporation (hereinafter called the "Hygrade Company") is a corporation engaged in the meat packing business, and for some years has owned and operated a packing plant immediately north of the stockyards, at which plant said Hygrade Company receives and slaughters all kinds of live stock, and thereafter packs and ships the products thereof.

(3) Since the Yards Company started the operation of the stockyards, there have been located immediately adjacent to the stockyards the plants of numerous companies engaged in the meat packing business, including the plants of the largest of such companies operating in the United States. All of such plants, including that of the Hygrade Company have for many years secured a large part of the livestock required by them from commission men engaged in buying and selling such live stock in the stockyards. In addition, all or some of such plants, including that of the Hygrade Company, have for many years purchased live stock in Illinois, Iowa and other states, which live stock has been shipped to such purchasers at Chicago over the railroads of your petitioners, and delivered to such purchasers through the stockyards. The location of such packing plants adjacent to the stockyards has been for the sole purpose of serving the convenience of the packing companies owning such plants, since it enables them, with a minimum of expense and trouble, to purchase at the stockyards and thereafter have delivered to such plants the live stock necessary in the operation of their business.

[fol. 9] (4) Because of the location of meat packing plants at the stockyards, almost all of the shipments of live stock

to and from Chicago move to and from consignees and shippers at the stockyards. The stockyards now covers a large area, completely covered by buildings, streets, pens, platforms, scales and other facilities necessary in the general handling of live stock, all of great value; and the Yards Company now handles, and for some years has handled, a larger volume of live stock than any other stockyards company in the world.

(5) Ever since it began business, the Yards Company has had in effect certain charges designated as "yardage charges," which it assesses and collects on all live stock bought or sold at the stockyards or handled by the Yards Company or upon its property, said charges constituting the compensation of the Yards Company for services performed by it or for the use of its property. At all times said charges have been charged against the live stock handled in the stockyards and have been collected by the Yards Company from the consignees of said live stock. Said charges have never been billed against or paid by petitioners, nor have petitioners ever received any of said charges, they being made for services rendered and facilities furnished by the Yards Company after the live stock has been placed in suitable unloading pens at the stockyards. Since the effective date of the Packers and Stockyards Act, 1921, the stockyards has been a public stockyards under the provisions of said act, and said yardage charges have been published by the Yards Company in tariffs on file with the Secretary of Agriculture, as required by said act.

(6) Each of the petitioners engaged in the line haul transportation of live stock maintains upon its rails in the Chicago switching district suitable and adequate facilities at [fol. 10] which shippers and consignees of live stock may ship and receive such live stock without payment additional to the line haul rate on such live stock, and the tariffs on each such petitioner, on file with the Commission, list such facilities as points at which such service will be furnished. Other tariffs of said petitioners, on file with the Commission, provide that on the transportation of live stock to or from industries, chutes and sidings of the Yards Company at the stockyards, the Chicago rates will apply, plus $2.70 per car in the case of petitioners operating west of Chi-

cago and $1.35 per car in the case of petitioners operating east of Chicago; also that on shipments of live stock to or from such points at the stockyards such petitioners will pay $1 per car to the Yards Company for unloading such shipments from cars into suitable pens or for loading such shipments from such pens into cars.

(7) In case of shipments to consignees at the stockyards, petitioners other than Chicago Junction Railway, The Chicago River and Indiana Railroad Company, and The Baltimore and Ohio Chicago Terminal Railroad Company, haul such shipments with their own power over the line of petitioner Chicago Junction Railway, and place them at the unloading platforms owned by the Yards Company. The Yards Company then unloads such shipments into suitable unloading pens or chutes owned by it and for this service is paid $1 per car by the carrier hauling the shipment to the unloading platform. Such shipments are then delivered by the Yards Company to the consignees, either at the unloading pens or chutes immediately after unloading or subsequently at other of its pens. In either case, the Yards Company collects its yardage charges on each of such shipments from the consignee thereof, it always having been and [fol. 11] now being impossible for petitioners to deliver live stock to consignees at the stockyards without there being a use of the services and facilities of the Yards Company by such live stock after it has been placed in the unloading pens or chutes of the Yards Company. Such charges are made under tariffs of the Yards Company on file with the Secretary of Agriculture, and no petitioner receives any part of such charges.

(8) On March 23, 1931, the Hygrade Company filed with the Commission a complaint naming your petitioners, the Stockyards Company, and numerous other transportation and stockyards companies as defendants. Such complaint alleged among other things that on each shipment of live stock consigned and delivered to the Hygrade Company at the stockyards, the Yards Company collected from the Hygrade Company the yardage charges hereinbefore referred to; that such yardage charges were not covered by any tariffs filed by the defendants named with the Commission in accordance with the Interstate Commerce Act; that for such charges the defendants named rendered no service ad-

ditional to that necessary in making delivery of such live-stock under paragraph (5) of Section 15 of the Interstate Commerce Act; that said charges covered a portion of the interstate transportation of such shipments, and not being filed with the Commission could not be lawfully collected. Subsequently, the Hygrade Company amended its said complaint, alleging, among other things, that the defendants named had constituted the stockyards their depot for the receipt and delivery of live stock; that the practice whereby the Yards Company imposed such yardage charges upon the Hygrade Company violated the law. Said complaint was designated on the docket of the Commission as "No. 24375, Hygrade Food Products Corporation v. Atchison, [fol. 12] Topeka & Santa Fe Railway Company, et al.," a copy thereof and of the amendment thereto being attached hereto, marked Exhibits 1 and 2.

(9) Petitioners filed answers to said complaint and thereafter, upon due notice, a hearing was had before the Commission in said cause, evidence was introduced by the Hygrade Company and the defendants therein, including petitioners, briefs were filed with the Commission and the cause submitted to it for decision. On July 25, 1933, said Commission made its report in said cause, six of its members, constituting a majority, finding that live stock in carloads, consigned to the Hygrade Company at the stockyards, was not and is not subject to yardage charges in instances where delivery is or was taken at the unloading pens and awarding to the Hygrade Company reparation for such charges paid by it in the past. Five members of the Commission dissented from this decision of the majority, holding that the obligations of petitioners, as common carriers of live stock, terminated under the law when such live stock was delivered by petitioners into suitable unloading pens at the stockyards; that if the Hygrade Company had any complaint against the yardage charges assessed upon its shipments by the Yards Company, complaint against such charges should be filed with the Secretary of Agriculture, and recommending that the complaint should be dismissed. A copy of said report is attached hereto, marked Exhibit 3.

(10) Thereafter, on July 2, 1934, the Commission made an order denying a petition for reargument previously filed

on behalf of petitioners and requiring that petitioners and the other defendants named in the complaint filed by the Hygrade Company cease and desist, on or before September 20, 1934, and thereafter abstain from the practices de-
[fol. 13] scribed in its report of July 25, 1933, which it was held subjected the Hygrade Company to the payment of said yardage charges in instances where delivery is taken at the unloading pens provided for such purposes. Said order further provided that the proceeding before the Commission should be reopened for further hearing to determine the amount of reparation which might be due the Hygrade Company under the findings made by the Commission. A copy of said order is attached hereto, marked Exhibit 4.

(11) Petitioners allege that the report and order of the Commission made in the proceedings before it are so vague, indefinite and uncertain as to make said order invalid. In making said report and order the Commission did not determine the propriety of the collection by the Yards Company of its yardage charges on live stock, in carloads, consigned to the Hygrade Company at the stockyards, in instances where delivery of such live stock is taken at the unloading pens provided for such purposes, nor its right to make such collection; did not determine whether or not said yardage charges were subject to the jurisdiction of the Commission; did not determine whether or not the services for which said charges were collected were a part of interstate transportation; did not determine at what point nor under what circumstances the interstate transportation of live stock to the stockyards terminated; did not say whether the Yards Company should cancel its tariffs on file with the Secretary of Agriculture and cease collecting said charges, or whether it might continue to collect said charges under said tariffs, making collection thereof from the railroads; and did not, in condemning to some extent the collection of such yards charges from the Hygrade Company on live
[fol. 14] stock, in carloads, consigned to the Hygrade Company at the stockyards, determine and state definitely under what conditions such charges might be collected and under what conditions such charges might not be collected. Petitioners allege, therefore, that it is impossible for them to determine definitely what they should do in order to comply with said report and order and that by reason thereof

said order of July 2, 1934 is unreasonable, arbitrary, unlawful and void.

(12) Petitioners further allege that said order of July 2, 1934, purports to apply to all live stock in carloads, consigned to the Hygrade Company at the stockyards, in instances where delivery of such live stock is taken at the unloading pens provided for such purposes, whether such live stock has moved in interstate or intrastate commerce; that such live stock moving in intrastate commerce is not subject to the Act to Regulate Commerce nor to the jurisdiction of the Commission; that said order is, therefore, beyond the power and authority of the Commission and is unreasonable, arbitrary, unlawful and void.

(13) Petitioners further allege that if by said report and order the Commission intended to and did hold, as a matter of law, that the interstate transportation of live stock in carload lots, consigned to the Hygrade Company at the stockyards, does not terminate when such live stock is placed in suitable pens at the stockyards, then the Commission erred in law, and that its said order entered on July 2, 1934, is unreasonable, arbitrary and void.

(14) Petitioners further allege that under Section 15 (5) of the Interstate Commerce Act, transportation of ordinary live stock consigned to the stockyards does not include the [fol. 15] rendering of any service or the furnishing of any facility beyond the placing of such live stock in suitable unloading pens; that by said statute petitioners have no transportation duty or liability beyond such suitable unloading pens; that none of petitioners are under any transportation duty to furnish holding pens or driveways necessary in the removal of such live stock from the stockyards to public highways or to premises of the consignees of such live stock; that if by said report and order the Commission intended to and did hold that petitioners should, as a part of transportation to the stockyards, furnish holding pens and driveways for the use of consignees in addition to suitable unloading pens, without charge, it extends the duty and liability of petitioners in violation of said Section 15 (5), and therefore said order of July 2, 1934 is unlawful, being beyond the power of the Commission to make or enforce, and is void.

(15) Petitioners further allege that said order of July 2, 1934 is in any case unreasonable, arbitrary, unlawful and void for the reason that the Yards Company is not now and was not, at the time of the entry of said order, or at any time mentioned in the complaint filed with the Commission by the Hygrade Company, a common carrier engaged in interstate commerce subject to the Interstate Commerce Act or the jurisdiction of the Commission; that there is no law and no evidence in the record of the proceedings before the Commission which justifies a holding that the Yards Company is subject to said act and the jurisdiction of the Commission; that said order is, therefore, beyond the power and jurisdiction of the Commission to make or enforce and is void.

[fol. 16] (16) Petitioners further allege that if by said report and order the Commission intended to and did hold that petitioners should pay to the Yards Company said yardage charges on live stock in carloads, consigned to the Hygrade Company at the stockyards, in instances where delivery is taken of such live stock at the unloading pens provided for such purposes, then said order of July 2, 1934, is unreasonable, arbitrary, unlawful and void, in that it will require the payment by petitioners of charges for services performed by the Yards Company, over which charges and services petitioners have no jurisdiction or control and which services are performed after the transportation of such live stock by each of petitioners has terminated; that the Commission has no jurisdiction to make such a requirement; that for any such expenditure, petitioners would receive nothing; that there is no law and no evidence in the record of the proceedings before the Commission which justifies such a requirement and that if said order is given such effect, it will operate to confiscate the property of petitioners and deprive them of their property without due process of law and without compensation, in violation of the provisions of the Fifth Amendment to the Constitution of the United States.

(17) Petitioners further allege that if by said report and order the Commission intended to and did hold that petitioners should pay to the Yards Company its yardage charges on live stock, in carloads, consigned to the Hygrade

Company at the stockyards, in instances where delivery of such live stock is taken at the unloading pens provided for such purposes, then said order of July 2, 1934, is unreasonable, arbitrary, unlawful and void in that it will require the interstate and intrastate transportation of such live stock [fol. 17] by petitioners at a lower rate of freight than has heretofore been paid to and received by petitioners for such transportation, as provided in their tariffs on file with the Commission; that in the record of the proceedings before the Commission there is no evidence which justifies such a requirement and that it is, therefore, beyond the power and jurisdiction of the Commission; that if said order is given such effect, it will operate to confiscate the property of petitioners and deprive them of their property without due process of law, in violation of the provisions of the Fifth Amendment to the Constituiton of the United States.

(18) Petitioners further allege that if by said report and order the Commission intended to and did hold that petitioners should pay to the Yards Company its yardage charges on shipments of live stock, in carloads, consigned to the Hygrade Company at the stockyards, in instances where delivery of such live stock is taken at the unloading pens provided for such purposes, then said order of July 2, 1934, is unreasonable, arbitrary, unlawful and void, in that it will require the payment by petitioners of charges for services not subject to the Interstate Commerce Act and not within the jurisdiction of the Commission, said yardage charges being subject only to the jurisdiction of the Secretary of Agriculture; that such a requirement is beyond the power and jurisdiction of the Commission and that it is not justified by any law or by any evidence in the record of the proceedings before the Commission; that for any payments so made by petitioners they will receive nothing and that if said order is given such effect, it will operate to confiscate the property of petitioners and deprive them of their property without due process of law, in violation of the provisions of the Fifth Amendment to the Constitution of the United States.

[fol. 18] (19) Petitioners further allege that if by said report and order the Commission intended to and did hold that the transportation of live stock in carload lots, con-

signed to the Hygrade Company at the stockyards, did not terminate when such live stock was placed in suitable pens at the stockyards, then the Commission erred in law and that its said order entered on July 2, 1934, is unreasonable, arbitrary, unlawful and void, in that it will impose upon petitioners transportation burdens not incident to their engagement, and will require them to furnish, without compensation, at a station not on the lines of railroad operated by them, services and facilities which the law does not require them to so furnish; that there is no law and no evidence in the record of the proceedings before the Commission justifying such a requirement, and that said order, if given such effect, will operate to confiscate the property of petitoners and deprive them of their property without due process of law and without compensation, in violation of the provisions of the Fifth Amendment to the Constitution of the United States.

(20) Petitioners further allege that the said order of the Commission becomes effective on or before September 20, 1934, and that by that date, petitioners are required to cease and desist from the practices described in the Commission's report and which subject the Hygrade Company to the payment of yardage charges on live stock in carloads consigned to it at the stockyards, in instances where delivery of such live stock is taken at the unloading pens provided for such purposes. By paragraph (17) of Section 1 of the Interstate Commerce Act, heavy pecuniary penalties are imposed upon any carrier, as well as its officers, agents and employees, who refuse or fail to obey any such [fol. 19] order of the Commission as that entered by it as hereinbefore alleged, on July 2, 1934; to wit, a forfeiture to the United States of not less than $100 nor more than $500 for each such offense and $50 for each and every day of the continuance of such offense.

(21) Petitioners further allege that as hereinbefore set out, said order of July 2, 1934, is so vague, indefinite and uncertain that they cannot determine what they should do in order to comply therewith; but that any action taken by them, in attempted compliance with the requirements of said order, will deprive them and each of them of large amounts which they will be required to expend; that in the event of their making such expenditures, petitioners will be unable to recover the same said order is hereafter set

aside, suspended and annulled and the enforcement thereof enjoined; and that, therefore, unless it be suspended or set aside by order of this court, each of petitioners will be irreparably damaged.

Wherefore, petitioners pray:

(1) That the United States and the Commission be made parties defendant to this petition, and that subpoenas in chancery issue out of and under the seal of this Honorable Court, directed to said defendants as required by law, and that due and proper service of such process and of this petition be forthwith made by fixing a copy thereof in the office of the Secretary of the Commission and another copy in the Department of Justice as provided by law, and that thereby the defendants and each of them be required, on or before a date to be specified in such subpoenas or notices to appear herein and answer this petition, but not under oath, answer under oath being hereby expressly waived.

[fol. 20] (2) That a temporary or interlocutory injunction be entered herein, restraining, enjoining and suspending, until the further order of this court, the effect and enforcement of said order of the Commission.

(3) That after final hearing, this court adjudge, order and decree that said order of the Commission has at all times been beyond the lawful authority of the Commission, and that it be perpetually set aside, suspended and annulled and the enforcement thereof perpetually enjoined.

(4) That petitioners and each of them may have such other and further relief in the premises as in equity and justice they are entitled to receive, and as may be deemed by this Honorable Court to be adequate and proper under the circumstances.

And as in duty bound, petitioners will ever pray, etc.

Silas H. Strawn, Ralph M. Shaw, E. A. Boyd, P. F. Gault, Walter McFarland, J. N. Davis, Wallace Hughes, D. P. Connell, James Stillwell, L. H. Strasser, Frank H. Towner, Solicitors for Petitioners.

[fol. 21] *Duly sworn to by J. A. Behrle. Jurat omitted in printing.*

[fol. 22] EXHIBIT 1 TO AMENDED PETITION

Before the Interstate Commerce Commission

HYGRADE FOOD PRODUCTS CORPORATION, Complaint,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
The Baltimore and Ohio Railroad Company,
The Baltimore and Ohio Chicago Terminal Railroad Company,
Canadian National Railway Company,
Canadian National Railways,
Canadian Pacific Railway Company,
Cedar Rapids and Iowa City Railway,
The Chesapeake and Ohio Railway Company,
The Chicago and Alton Railroad Company (William W. Wheelock and William G. Bierd, Receivers),
Chicago and Eastern Illinois Railway Company,
Chicago and Erie Railroad Company,
Chicago and North Western Railway Company,
Chicago, Burlington & Quincy Railroad ompany,
Chicago Great Western Railroad Company,
Chicago, Indianapolis and Louisville Railway Company,
Chicago Junction Railway (The Chicago River and Indiana Railroad Company, Lessee),
Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
The Chicago River and Indiana Railroad Company,
The Chicago, Rock Island and Gulf Railway Company,
The Chicago, Rock Island and Pacific Railway Company,
Chicago, Saint Paul, Minneapolis and Omaha Railway Company,
The Cincinnati, New Orleans and Texas Pacific Railway Company,
The Cleveland, Cincinnati, Chicago and St. Louis Railway Company (The New York Central Railroad Company, Lessee),
Fort Worth and Denver City Railway Company,
Gulf Colorado and Santa Fe Railway Company,
Gulf Colorado and Santa Fe Railway Company,
Illinois Central Railroad Company,
Kansas City Terminal Railway Company,

Kansas, Oklahoma & Gulf Railway Company,
Kentucky & Indiana Terminal Railroad Company,
Louisville and Nashville Railroad Company,
The Michigan Central Railroad Company (The New York Central Railroad Company, Lessee),
Midland Valley Railroad Company,
[fol. 23] Minneapolis, St. Paul & Sault Ste. Marie Railway Company,
Missouri-Kansas-Texas Railroad Company,
Missouri-Kansas-Texas Railroad Company of Texas,
Missouri Pacific Railroad Company,
Mobile and Ohio Railroad Company,
The New York Central Railroad Company,
The New York, Chicago and St. Louis Railroad Company,
Northern Pacific Railway Company,
Panhandle and Santa Fe Railway Company,
The Pennsylvania Railroad Company,
The St. Joseph and Grand Island Railway Company,
St. Paul Bridge & Terminal Railway Company,
Southern Railway Company,
Union Pacific Railroad Company,
The Union Stock Yard and Transit Company of Chicago,
Union Stock Yards Company of Omaha, Limited,
Union Terminal Railway Company (of St. Joseph, Mo.),
Wabash Railway Company,
The Wichita Valley Railway Company, Defendants.

Complaint

The complaint of the above named complainant respectfully shows:

I

That the Hygrade Food Products Corporation, complainant, is a corporation organized under the laws of the State of New York, with its principal office at New York City, New York; that it is engaged in the meat packing business, and that it operates packing houses, among other points, at Chicago, Illinois, and that its packing house at Chicago, Illinois, is an industry located on the Chicago Junction Railway in the State Line district at the substation Union Stock Yards, Illinois.

II

That the defendants above named are common carriers engaged in the transportation of live stock between the points of origin and point of destination hereinafter mentioned, and as such common carriers are engaged in interstate commerce and subject to the provisions of the Interstate Commerce Act.

[fol. 24] That the defendant, The Union Stock Yard and Transit Company of Chicago, is a corporation operating a public stock yards at Chicago, Illinois sub-station Union Stock Yards, Illinois, which is also operated as a depot of the other defendants herein for the receipt and delivery of live stock at that station. That the delivery of live stock to persons or corporations at Chicago, Illinois, sub-station Union Stock Yards, Illinois, is accomplished through the sidings, chutes and pens of the Union Stock Yard and Transit Company, and that in accomplishing said deliveries the said Union Stock Yard and Transit Company is the agent of the railroad defendants hereinabove named, and that for the delivery by the Union Stock Yard and Transit Company of the live stock consigned direct to persons or corporations at Chicago, Illinois, sub-station Union Stock Yards, Illinois, an additional charge over and above the rates named in tariffs lawfully on file with your Commission is assessed in amounts hereinafter described.

III

That the complainant, in the course of its business, purchases live stock, i. e., cattle, calves, hogs and sheep, at numerous points located in the states of Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, New Mexico, New York, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas and Wisconsin, and that the live stock so purchased by complainant is then shipped by it and for its account, in carloads, over the lines of one or more of the defendants hereinabove named to said complainant at Chicago, Illinois, sub-station Union Stock Yards, Illinois.

IV

That the complainant has paid, and is paying, for the transportation of live stock transported as aforesaid the

line-haul rates lawfully on file with the Commission according to the various tariffs of the line-haul carriers participating therein, and in addition pays $2.70 or $1.35 per car pursuant to Agent Galligan's Tariff 20-S, I. C. C. No. 182, and preceding issues thereof.

[fol. 25]

V

That complainant is taking, and has taken, the delivery of the livestock so transported at pens of the Union Stock Yard and Transit Company, an industry on the Chicago Junction Railway at Chicago, Illinois, the sub-station being Union Stock Yards, Illinois; that in respect to numerous carload shipments of live stock heretofore made complainant has directed that delivery be made to it at its own siding and chutes, but that the defendant carriers hereinbefore named have refused to make such delivery and have insisted that complainant take delivery of its live stock through the chutes and pens of the Union Stock Yard and Transit Company. That this action has been taken by the defendant carriers despite the fact that, under the provisions of Agent Galligan's Tariff 20-S, I. C. C. 182, the line-haul rates plus the aforesaid additional charge of $2.70 or $1.35 per car are applicable from the various points of origin from which said live stock is and has been shipped to complainant's siding.

VI

That on all live stock which complainant has shipped to itself at Chicago, the complainant has paid to the Union Stock Yard and Transit Company, with delivery taken as aforesaid, charges of 35 cents per head on cattle, 25 cents per head on calves, 12 cents per head on hogs, and 8 cents per head on sheep, this in addition to the line-haul rates plus $2.70 or $1.35 per car. That for these charges neither the defendant carriers nor the Union Stock Yard and Transit Company rendered any service over and above the services necessary in making delivery to complainant of its shipments of live stock as required by Section 15(5) of the Interstate Commerce Act.

VII

The charges per head, recited in the foregoing paragraph, are denominated "yardage charges" and purport to cover

services rendered after transportation has been completed. In fact, however, as applied to complainant's shipments, transportation is not completed until said live stock is de-
[fol. 26] livered to complainant and placed in its control, and consequently said charges cover a portion of the interstate transportation services rendered. Such charges, however, are not carried in any tariff on file with your Commission and are consequently being collected without tariff authority.

That the collection on complainant's traffic of charges for making delivery of its live stock in addition to the line-haul charges plus $2.70 or $1.35 per car is unjust and unreasonable in violation of Section 1 of the Act.

VIII

That the defendants make no charges in addition to the line-haul rate plus $2.70 or $1.35 per car for delivering live stock on the siding of the Omaha Packing Company, located at Chicago, Illinois. Furthermore, the defendants, in so far as they serve:

The Bourbon Stock Yard Company, Louisville, Ky.

The LaFayette Union Stock Yards Company, LaFayette, Indiana,

make no additional charge over the line-haul rates lawfully on file with your Commission for delivering direct shipments of live stock to packing houses, competitors of the complainant, located at the points just named.

IX

That, by reason of the facts just recited, complainant and its traffic are unduly prejudiced, and complainant's competitors and their traffic, on which no additional charge is assessed, are unduly preferred.

X

That complainant has been damaged by the circumstances hereinabove recited to the extent that the charges assessed on live stock shipped to it at Chicago, Illinois, exceed, or have exceeded, the line haul rates plus $2.70 or $1.35 per car. Complainant has been further damaged by the refusal of the defendants herein to deliver live stock to it at its own

siding, by reason of the additional expense incurred in driv-
[fol. 27] ing live stock from the pens of the Union Stock Yard and Transit Company to complainant's own pens at its plant.

XI

That, by reason of the facts stated in the foregoing paragraphs, complainant is and has been subjected to the payment of rates and charges for transportation which, when exacted were, and still are unjust and unreasonable in violation of Section 1 of the Interstate Commerce Act; unduly preferential and prejudicial in violation of Section 3 thereof; in so far as collected without tariff authority, in violation of Section 6 thereof; and in violation of Section 15 thereof; and that complainant has been injured thereby in the past and will continue to be injured so long as the situation of which complaint is here made continues.

Wherefore complainant prays that defendants may be severally required to answer the charges herein; that after due hearing and investigation an order be made commanding said defendants, and each of them to cease and desist from the aforesaid violations of said Act, and establish and put in force and apply in future to the transportation of live stock here involved, such other rates as the Commission may deem reasonable and just, and also pay to complainant by way of reparation for the unlawful charges hereinbefore alleged such sum as, in view of the evidence to be adduced herein, the Commission shall determine that complainant is entitled to as an award of damages under the provisions of said Act for violation thereof, and that such other and further order or orders be made as the Commission may consider proper in the premises.

Hygrade Food Products Corporation, by A. W. Cushman, Vice-president.

Dated at Chicago, Illinois, March 17, 1931.

[fol. 28] EXHIBIT 2 TO AMENDED PETITION

Before the Interstate Commerce Commission

Docket No. 24375

HYGRADE FOOD PRODUCTS CORPORATION, Complainant,

against

THE ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY, et al., Defendants

Motion to Amend Complaint

Now comes Hygrade Food Products Corporation, the complainant in the above entitled proceeding, and respectfully makes its motion herein to amend its complaint in the following particulars, to wit:

1. By adding a new paragraph to be inserted after paragraph VII on page 5 of said complaint, to read as follows:

VII-A

That said defendants or some of them have alleged or claimed that the proper rate to apply to shipments of live stock from points outside the Chicago district to be delivered at complainant's own siding in said city is "the Chicago rate plus the Chicago Junction switching charge, which is 2¢ per cwt. with a minimum of 60,000 pounds". The complainant does not concede that this is the proper or applicable rate but alleges that if said combination of the Chicago rate plus the Chicago Junction switching charge were applicable to shipments of live stock made and [fol. 29] delivered as aforesaid, said combination of rates is, and for the future would be, unjust and unreasonable in violation of Section 1 of the Act to the extent that said combination exceeds or would exceed the line-haul rate to Chicago plus $2.70 or $1.35 per car.

2. By adding two new paragraphs to be inserted after paragraph IX on page 6 of said complaint, to read as follows:

IX-A

That irrespective of the amount or character of said yardage charges and irrespective of the failure of the de-

fendants to file with the Commission tariffs showing the amount and the fact of imposition of said yardage charges, the practice of said defendants in making the stock yards of the defendant The Union Stock Yard & Transit Company of Chicago their depot for the receipt and delivery of live stock at Union Stock Yards, Illinois, and in making or causing to be made deliveries of live stock at said depot pursuant to an arrangement wherein and whereby said The Union Stock Yards & Transit Company of Chicago may and does impose said yardage charges upon complainants is unjust and unreasonable in violation of Section 1 of the Act.

IX-B

That irrespective of the amount or character of said yardage charges and irrespective of the failure of the defendants to file with the Commission tariffs showing the amount and the fact of imposition of said yardage charges, the practice of said defendants in making no charge in addition to the line-haul rate, plus $2.70 or $1.35 per car, for delivering live stock in car loads on the siding of the Omaha Packing Company located at Chicago, Illinois, while at the same time requiring the complainant to take delivery of its live stock at the stock yards of the defendant, The Union Stock Yard & Transit Company of Chicago, subject to payment of said line-haul rate, plus $2.70 or $1.35 per [fol. 30] car, pursuant to an arrangement wherein and whereby said The Union Stock Yard & Transit Company of Chicago may and does impose said yardage charges, upon complainant (or in the alternative requiring complainant to pay the line haul rate, plus the Chicago Junction switching charge for delivering at complainant's siding), is unduly prejudicial to complainant and its traffic and unduly preferential to said Omaha Packing Company and its traffic in violation of Section 3 of the Act and is unjustly discriminatory under Section 2 of the Act.

3. By striking out paragraph XI of the complaint as now constituted and substituting therefor the following:

That, by reason of the facts stated in the foregoing paragraphs, complainant is and has been subjected to the payment of rates and charges for transportation which, when exacted, were, and still are, unjust and unreasonable in violation of Section 1 of the Interstate Commerce Act; un-

justly discriminatory in violation of Section 2 thereof; unduly preferential and prejudicial in violation of Section 3 thereof; in so far as collected without tariff authority, in violation of Section 6 thereof; and in violation of Section 15 thereof; and the complainant has been injured thereby in the past and will continue to be injured so long as the situation of which complaint is here made continues.

Respectfully submitted, Hygrade Food Products Corporation, by Cyril J. Curran, Its Attorney, Office & P. O. Address: 23rd Floor, 15 Broad Street, New York, N. Y. Hornblower, Miller, Miller & Boston, Of Counsel, 23rd Floor, 15 Broad Street, New York, N. Y.

Dated, New York, N. Y., November 2, 1931.

[fol. 31] EXHIBIT 3 TO AMENDED PETITION

18910

Interstate Commerce Commission

No. 24375

(Submitted January 25, 1933. Decided July 25, 1933)

HYGRADE FOOD PRODUCTS CORPORATION

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al.

1. Livestock, in carloads, consigned to complainant at the Union Stock Yards, Chicago, Ill., found not subject to yardage charges in instances where delivery was or is taken at the unloading pens. Reparation awarded.

2. Switching charge applicable to the placement for delivery of carloads of live stock at complainant's plant at Chicago not shown to be unreasonable or otherwise unlawful.

Cyril J. Curran for complainant.

J. N. Davis, D. P. Connell, P. F. Gault, Walter McFarland, E. Rigg, R. G. Raasch, Frank H. Towner, and Luther M. Walter for defendants.

Paul E. Blanchard, Ross Dean Rynder, and William N. Strack for interveners.

Report of the Commission

By the Commission:

Exceptions were filed by complainant and defendants to the report proposed by the examiner, and the case was orally argued. Our conclusions differ somewhat from those recommended by him.

[fol. 32] Complainant, a corporation, has a packing house on the rails of the Chicago Junction Railway near the public stockyards known as the Union Stock Yards at Chicago, Ill. By complaint filed March 19, 1931, as amended, it is alleged that for the delivery of carloads of livestock at these public yards certain yardage charges assessed in addition to the rates named in tariffs on file with us were and are inapplicable, that the imposition of these charges was and is unreasonable, that switching charges demanded for the placement of car loads of live stock at complainant's plant are inapplicable and if applicable are unreasonable, and that these charges were and are unjustly discriminatory, unduly prejudicial to complainant, and unduly preferential of the Omaha Packing Company, in Chicago, a competitor of complainant. Reparation and a lawful adjustment for the future are sought. The Omaha Packing Company intervened. Armour and Company intervened in support of the complaint. The term livestock as used herein embraces only animals intended for slaughter, such as cattle, hogs, and sheep.

Complainant's plant lies directly north of the unloading pens of the Union Stock Yards which are operated by the Union Stock Yard & Transit Company. There is a connecting subway under a public highway through which livestock are driven from the yards to the plant. Complainant's plant is served only by the rails of the Chicago Junction. No livestock have ever moved by rail to or from the sidings at complainant's plant or to or from rails adjacent thereto. In addition to certain sidings used and needed for other freight, and which complainant does not suggest or offer for receipt of livestock, there are two stub tracks near the western boundary of complainant's plant, now used for car storage, which were constructed about the year 1924. The capacity of each of these stubs is 10 or 12 cars. Com-

plainant proposes the use of one of these stubs for the receipt of livestock. There are now no facilities there for the unloading of livestock and no scales for weighing. Complainant contends that the charges of $2.70 and $1.35 per carload of livestock from the West and East respectively, applicable to deliveries to "industries, chutes or sidings of the Union Stock Yard & Transit Company, at [fol. 33] Union Stock Yards" apply to deliveries at its plant. This contention is without merit. The published switching charge applicable to the placement at complainant's plant of a carload of livestock is $12.

No sidetrack delivery of livestock to any packing house or other industry is made by the Chicago Junction. The Union Stock Yards are public yards, served over the rails of the Chicago Junction by the individual line-haul carriers bringing livestock to Chicago, and they are the livestock terminal at Chicago of all of these carriers. They provide for the carriers the means of making the deliveries of livestock to consignees at these public yards which they are under obligation to make.

The Omaha Packing Company is an industry local to the rails of the Chicago, Burlington & Quincy Railroad Company, hereinafter called the Burlington. This industry receives no shipments and buys no livestock through or at the Union Stock Yards. All livestock received by it by rail are placed by the Burlington and the actual unloading into pens and the hoof weighing of the animals is assumed by the industry itself. It is a subsidiary of Swift & Company. Swift & Company, the complainant, and all dealers in livestock in Chicago, other than the Omaha Packing Company, receive direct or buy after receipt by others all inbound livestock at the Union Stock Yards.

Within the switching limits of Chicago, in addition to the facilities of the Union Stock Yards, certain of the line-haul carriers maintain facilities for unloading livestock, the use of which by complainant is impractical. No carrier other than the Burlington delivers or places carload shipments of livestock at any private industry. Defendants have refused to provide for the delivery of livestock at complainant's plant at the rates and charges which apply on livestock delivered at the Union Stock Yards or at the plant of the Omaha Packing Company.

Defendants urge that, if plant delivery of livestock were made for this complainant, all other packing industries

similarly situated on the Chicago Junction Railway would be entitled to like services and that if such services were attempted to be rendered generally, confusion and delay would result. While deliveries are made at the plant of [fol. 34] the Omaha Packing Company without the assessment of a switching charge such as applies to deliveries at complainant's plant, there is no indication that transportation services, conditions, and circumstances connected with deliveries at complainant's plant would be substantially similar to those connected with deliveries at the plant of the Omaha Packing Company, and no facts of record lead to the conclusion that charges applicable to such services as may be performed in making deliveries at complainant's plant are unreasonable or that the differences in these charges are not warranted.

Yardage charge per animal are assessed on all shipments of livestock delivered at the Union Stock Yards, and have been assessed since the establishment of the yards. They now are per head of cattle 35 cents, calves 25 cents, hogs 12 cents, and sheep 8 cents, and these are the charges whether or not the animals are weighed. A schedule naming these charges is filed with the Department of Agriculture in purported compliance with the Packers and Stockyards Act, 1921, but has not been filed with us. Complainant contends that these charges are for transportation services and may not be assessed. The fact that certain services come within the term transportation as defined in section 1 of the Interstate Commerce Act, and the fact that charges assessed for such services are not in any schedule on file with us are not of themselves sufficient reasons why no charges may be made therefor. Memphis Freight Bureau v. K. C. S. Ry. Co., 17 I. C. C. 90. Complainant does not allege that the yardage charges in issue are unreasonable if they may be lawfully applied, and relies upon section 15, paragraph (5), of the act, which provides that:

Transportation wholly by railroad of ordinary livestock in carload lots destined to or received at public stockyards shall include all necessary service of unloading and reloading en route, delivery at public stockyards of inbound shipments into suitable pens, and receipt and loading at such yards of outbound shipments, without extra charge therefor to the shipper, consignee or owner, * * *.

[fol. 35] Under this provision of the act which applies to interstate transportation by rail of ordinary livestock to all public stockyards, including the Union Stock Yards, no extra charge may be made for any portion of the necessary service of delivery into suitable pens, and consignees are entitled to delivery at pens suitable for proper delivery without charge for the mere placement therein of the livestock. The fact that the line-haul carriers have other places of delivery at Chicago, where no extra charge is made, is not a legally sufficient reason, as contended by these carriers, for an extra charge at the Union Stock Yards. In Covington Stock Yards Co. v. Keith, 139 U. S. 128, decided March 2, 1891, the Supreme Court of the United States said:

So, when livestock reach the place to which they are consigned, it is the duty of the carrier to deliver them to the consignee; and such delivery cannot be safely or effectively made except in or through inclosed yards or lots, convenient to the place of unloading. In other words, the duty to receive, transport and deliver livestock will not be fully discharged, unless the carrier makes such provision, at the place of loading, as will enable it to properly receive and load the stock, and such provision, at the place of unloading, as will enable it to properly deliver the stock to the consignee.

• • • • • • •

The same principle necessarily applies to the receiving of livestock by the carrier for transportation. The carrier must at all times be in proper condition both to receive from the shipper and to deliver to the consignee, according to the nature of the property to be transported as well as to the necessities of the respective localities in which it is received and delivered. A carrier of livestock has no more right to make a special charge for merely receiving or merely delivering such stock, in and through stock yards provided by itself, in order that it may properly receive and load, or unload and deliver, such stock, than a carrier of passengers may make a special charge for the use of its passenger depot by passengers when proceeding to or com-
[fol. 36] ing from its trains, or than a carrier may charge the shipper for the use of its general freight depot in merely delivering his goods for shipment, or the consignee

of such goods for its use in merely receiving them there within a reasonable time after they are unloaded from the cars. If the carrier may not make such special charges in respect to stock yards which itself owns, maintains or controls, it cannot invest another corporation or company with authority to impose burdens of that kind upon shippers and consignees. The transportation of live stock begins with their delivery to the carrier to be loaded upon its cars, and ends only after the stock is unloaded and delivered, or offered to be delivered, to the consignee, if to be found, at such place as admits of their being safety taken into possession.

* * * * * * *

In respect to the mere loading and unloading of live stock, it is only required by the nature of its employment to furnish such facilities as are reasonably sufficient for the business at that city. So far as the record discloses, the yards maintained by the appellants are, for the purposes just stated, equal to all the needs, at that city of shippers and consignees of live stock; and if the appellees had been permitted to use them, without extra charge for mere "yardage," they would have been without just ground of complaint in that regard; for it did not concern them whether the railroad company itself maintained stock yards, or employed another company or corporation to supply the facilities for receiving and delivering live stock it was under obligation to the public to furnish.

A charge for the yardage of livestock after consignee has not taken advantage of any reasonable opportunity afforded to obtain prompt delivery is not a violation of any provision of the Interstate Commerce Act. What constitutes a reasonable opportunity may be determined from the circumstances at the particular yards concerned. At the Chicago Stock Yards 14,000,000 animals were unloaded in [fol. 37] 1930. Those yards are the greatest livestock terminal and market in the world. The magnitude of the business done there demands a degree of promptitude in the receipt and removal of animals that is not generally essential. It is indicated that the method of handling livestock at these yards is efficient and generally productive of satisfactory results. Livestock is moved over the rails of the

Chicago Junction to the unloading platforms of the Union Stock Yards by the line-haul crews. These platforms are provided with chutes or inclines connecting them with unloading pens which have capacities sufficient to hold any carload of livestock. The unloading is done by Stock Yards employees at the expense of the rail carriers and the average time of unloading is about 2 minutes to a carload. These unloading pens are not adapted for the prolonged holding of animals, or for their feeding, watering, and special care; from them the animals must be removed promptly, and if delivery is not then taken by the consignees the animals are placed in holding pens where they may receive the attention required. At the peak of receipts, livestock are removed from the unloading pens at frequent intervals measured in minutes, whereas, toward the last of the deliveries for the day, livestock may remain in the unloading pens for longer periods. Prompt handling is accomplished by the use of two groups of unloading pens. While one trainload of unloaded livestock is being removed from one group, another trainload is placed for unloading into another group. The first group then becomes available for the unloading of a third trainload.

As to about 15 percent of all shipments consigned to complainant it has taken delivery before the animals were placed in holding pens, and in such instances has driven them from the unloading pens over scales and across and through the ways provided by the stockyards company to complainant's pens and plant. It is asserted that such delivery can be taken as to over 90 percent of the shipments and it is not indicated that notice for that purpose is necessary. It does not appear that there is any occasion for placing the animals into holding pens if prompt delivery is desired. There cannot be reasonable doubt that the unloading chutes and pens are suitable for the receipt of livestock, and the accomplishment of proper delivery to [fol. 38] complainant. Complainant asserts that free delivery immediately upon arrival of livestock would be satisfactory but maintains that it is entitled also to free delivery at holding pens.

The fact that other freight is subject to storage or demurrage charges only after a lapse of considerable time is not a sufficient reason why a similar rule should apply in respect of yardage charges on livestock. After

unloading, livestock requires unusual attention and care such as is not required by other freight.

Defendants point out that the assessment of yardage charges is the established practice at stockyards throughout the United States and has been the practice of the Chicago yards over 60 years. They argue that the purpose of section 15, paragraph 5, of the act was merely to provide for the unloading of animals without extra charge. It is here demonstrated that there are no services performed after unloading for which defendants may assess charges, in instances where delivery is taken at the unloading pens. It appears that at some of the stockyards such delivery may be obtained without extra charge.

While we found in Strauss & Adler v. New York Central R. Co., 188 I. C. C. 487, that under the provisions of section 15, paragraph (5), of the act and the 28-hour law, unloading en route is required "into properly equipped pens for rest, feed and water" without extra charge, prompt delivery of livestock to complainant at the Union Stock Yards does not require pens so equipped. If placement into such pens is desired, an extra charge therefor is not within the inhibition of section 15 that an extra charge may not be assessed.

We find that the assailed switching charge on carloads of livestock placed for delivery at complainant's plan is not shown to be unreasonable or otherwise unlawful.

We further find that livestock, in carloads, consigned to complainant at the Union Stock Yards was not and is not subject to yardage charges in instances where delivery was or is taken at the unloading pens.

We further find that complainant paid charges found inapplicable, was damaged thereby in the amount paid, and [fol. 39] is entitled to reparation in that amount with interest. Complainant should comply with rule V of the Rules of Practice.

EASTMAN, Commissioner, concurring in part:

With one exception, I concur in this report as far as it goes, but I do not believe that it goes far enough. My general position in regard to this matter was indicated in my dissenting expression in E. Kahn's Sons Co. v. Baltimore & O. R. Co., 192 I. C. C. 705, 710-711. It does not seem to me that the unloading pens in this instance permit

of reasonable opportunity to accept delivery and remove the livestock from the premises after notice of arrival, and hence that they are not in all respects "suitable" for delivery within the meaning of section 15 (5) of the Interstate Commerce Act.

The exception referred to above is that I do not believe that the doctrine is sound which was enunciated in Memphis Freight Bureau v. K. C. S. Ry. Co., 17 I. C. C. 90.

LEE, Commissioner, dissenting in part:

With that portion of the finding which deals with the assailed switching charge I am in accord, but I disagree with the conclusion of the majority to the effect that the yardage charges here assailed were inapplicable in instances where delivery was taken at the unloading pens. Shipments consigned to complainant at Union Stockyards are unloaded at the carrier's expense directly into unloading pens which are owned and maintained by the stockyards company. As stated by the majority there can be no reasonable doubt that these pens are suitable for the receipt of livestock and the accomplishment of proper delivery. Section 15 (5) of the Interstate Commerce Act provides, among other things that transportation of ordinary livestock destined to public stockyards shall include delivery into suitable pens without extra charge. As indicated the carriers bear the expense of unloading into these pens and delivery into suitable pens is, therefore, accomplished without extra charge. There is no provision in the act which required the carriers to do more. I am of [fol. 40] the opinion, therefore, that we have no jurisdiction over the imposition of yardage charges on livestock after it has been delivered into the unloading pens at public stockyards. We have so held in two cases. See Southwestern Horse & Mule Asso. v. A., T. & S. F. Ry. Co., 129 I. C. C. 730; E. Kahn's Sons Co. v. Baltimore & O. R. Co., 192 I. C. C. 705. It is true that in the latter case, decided as recently as April 10, 1933, by the entire Commission, consignees could remove their livestock from the stockyards without the payment of any charges other than the line-haul rates. Nevertheless the majority found that transportation of ordinary livestock, in carloads, to public stockyards ended when the animals were unloaded into suitable pens at such yards and that this marked the limit

of our jurisdiction. The suitable pens were the unloading pens. Since we have no jurisdiction beyond the unloading point we have no concern with what occurs thereafter.

Consideration of the provisions of the Packers and Stockyards Act, 1921, strengthens the foregoing view. Under that act the Secretary of Agriculture is given jurisdiction over stockyard services at public stockyards, which services are defined as follows:

> The term "stockyard services" means services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling in commerce, of livestock.

When reporting to the House of Representatives the bill which later became the act referred to the chairman of the Committee on Agriculture said, in part:

> This bill proposes to give the Secretary of Agriculture complete inquisitorial, visitorial, supervisory, and regulatory power over the packers, stockyards, and all activities connected therewith, * * * that is, the Secretary shall have jurisdiction from the time the livestock is unloaded at the terminal yards and after it is out of the jurisdiction of the Interstate Commerce Commission. Up to the time of unloading the livestock the Interstate Commerce Commission has jurisdiction over the shipment * * *. Hence, [fol. 41] it is proposed that the Secretary's jurisdiction shall begin where the Interstate Commerce Commission's jurisdiction ends: * * *.

This leaves no doubt as to the intention of Congress to avoid conflicting or overlapping jurisdiction on the part of several Government agencies. But let us analyze the result under the majority findings as I understand them. As to livestock which is unloaded into the unloading pens and later placed in the so-called hold pens until such time as complainant is ready to remove them, our jurisdiction extends only up to the time the animals have been unloaded, and the Secretary of Agriculture has jurisdiction beyond that point, but where complainant is at the unloading pen and removes the animals direct therefrom, this Commission

steps in and continues beyond the unloading pen, into the realm of jurisdiction expressly given by the statute to the Secretary of Agriculture. Clearly it was not the intent of Congress to bring about such a situation. In this connection it is worthy of mention that an investigation instituted by the Secretary of Agriculture, and still pending, includes within its scope all of the services performed and charges made by the stockyards company, except the loading and unloading service and charges.

In purported compliance with the Packers and Stockyards Act a schedule of the yardage charges here complained of is on file with the Department of Agriculture, but it has not been filed with us. These charges are collected and retained by the stockyards company, and no portion of such charges is received by the rail carriers, either directly or indirectly. All of the foregoing lends support to the view that although the stockyards company is the agent of the carriers for the purpose of unloading the livestock, at the time the livestock is unloaded into suitable pens, our jurisdiction ends. Why, then, should the carriers be compelled to pay as reparation awarded by us, money which they never received.

The stockyards company began operation in February, 1865, and during the past 50 years no trunk-line railroad company has had any ownership interest in the company or any control over its affairs. At the present time no company engaged in the operation of a railroad has any [fol. 42] interest in the stockyards company. During the time this company has been in operation its business has grown to enormous proportions. Its present facilities enable it to set 350 cars of livestock for unloading at one time. The time required for unloading a car is approximately 2 minutes and the process of unloading is practically continuous. In the year 1930 the stockyards company unloaded 240,501 cars containing more than 14,000,000 animals and loaded out 48,501 cars. This brings me to another point which in my opinion merits consideration, namely, that Congress by the enactment of section 15 (5) in view of the tremendous volume of livestock moving through publiv stockyards, of which it must be presumed to have had knowledge, recognized that transportation to and from such yards had to be treated differently than ordinary freight. Manifestly, to permit every consignee to enter the stock-

yards and remove his shipment direct from the unloading pens would result in endless confusion, and seriously interfere with the successful operation of the stockyards. This principle was recognized by the Commission in connection with the unloading of livestock at Chicago as evidenced by the following language used by the Supreme Court in Adams v. Mills, 286 U. S. 397:

> The commission found that in view of the congested conditions in the Chicago stockyards and the great volume of traffic, it would have been physically impracticable, if not impossible, for the consignees themselves to unload their own shipments.

Does not the same impracticability and impossibility apply in connection with the consignees taking their livestock direct from the unloading pens?

The assessment of yardage charges has been the practice at these stockyards for over 60 years. Certain of the line-haul carriers maintain facilities for unloading livestock at points within the switching limits of Chicago other than the Union Stock Yards. At such points delivery can be taken without the payment of yardage charges. The magnitude of the business done at the Union Stock Yards indicates that shippers prefer to take delivery there even though such delivery necessitates the payment of a yardage charge. In this preference shippers are doubtless in- [fol. 43] fluenced by the superior services available at these yards and the advantages accruing from their proximity to the public markets. Among the many facilities furnished by the stockyards company is an elevated driveway through which complainant's livestock may be and is driven directly to its plant, which is separated from the stockyards by a public street. It is for the use of this and other facilities of the stockyards company that the charges complained of are assessed. In effect the majority conclude that these facilities and the elevated driveway must be furnished by the carriers as a part of the "transportation" which they are required to furnish, which term is defined in section 1 (3) as follows:

> The term "transportation" as used in this Act shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities of shipment or carriage, irrespective of

ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.

The majority say in effect that section 15 (5) in no wise modified section 1 (3). In my opinion the speci c provisions contained in section 15 (5) must be given eff ct over the general provisions contained in section 1 (3). Support for this view is found in the concluding sentence of section 15 (5) reading as follows:

Nothing in this paragraph shall be construed to affect the duties and liabilities of the carriers now existing by virtue of law respecting the transportation of other than ordinary livestock, or the duty of performing service as to shipments other than those to or from public stockyards.

The italicized portion clearly indicates an intention on the part of Congress to modify, and in my opinion it did modify, the services required of the carriers insofar as the duty of performing service on shipments of ordinary livestock to or from public stockyards was concerned. If this was not the case, manifestly the proviso in question is [fol. 44] meaningless. Furthermore, since the term "transportation" in section 1 (3) includes storage, would not the carriers be required (if the majority view is sound) to hold livestock, where complainant was not at the unloading pens, in the so-called hold pens as a part of the transportation service until complainant was ready to receive the same? But the majority holds, and correctly so, that the holding of livestock in such hold pens is not a service of transportation.

As indicated, the line-haul carriers collected nothing in excess of the lawful tariff charges for the service they performed. Transportation over which we have jurisdiction ends when the livestock is unloaded into suitable pens. Admittedly the unloading pens are suitable pens. If complainant is of the view that the charges made for the use of the stockyards' facilities are unreasonable or otherwise improper, its remedy lies not with this Commission but with the Secretary of Agriculture. For these reasons the complaint should be dismissed.

I am authorized to say that Commissioners Meyer, Porter, Mahaffie, and Miller join in this expression.

[fol. 45] EXHIBIT 4 TO AMENDED PETITION

Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 2nd day of July, A. D. 1934.

No. 24375

HYGRADE FOOD PRODUCTS CORPORATION

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, et al.

[fol. 46] It appearing, That on July 25, 1933, the Commission made and filed its report in the above-entitled proceeding, wherein it was found, inter alia, that livestock, in carloads, consigned to complainant Hygrade Food Products Corporation at Union Stock Yards, Chicago, Ill., was not subject to yardage charges in instances where delivery was or is taken at the unloading pens, which said report is hereby referred to and made a part hereof:

It further appearing, That on January 11, 1934, complainant filed petition for hearing on the question of the amount of reparation and for order requiring defendants to comply with the Commission's decision herein; that on January 20, 1934, defendants filed answer to complainant's petition and in said answer petitioned for reconsideration and reargument; and that on January 29, 1934, complainant filed its reply to defendants' petition for reconsideration and reargument:

And good cause appearing therefor:

It is ordered, That defendants' petition be, and it is hereby, denied.

It is further ordered, That the above-named defendants be, and they are hereby, notified and required to cease and

desist, on or before September 20, 1934, and thereafter to abstain from the practices described in the aforesaid report which subject complainant to the payment of yardage [fol. 47] charges on livestock, in carloads, consigned to complainant at Union Stock Yards, Chicago, in instances where delivery is taken at the unloading pens provided for such purposes.

It is further ordered, That the above-entitled proceeding be, and it is hereby, reopened for further hearing at such time and place as the Commission may hereafter direct for the purpose of determining the amount of reparation due complainant under the findings in this case.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 48] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ANSWER OF UNITED STATES TO AMENDED PETITION—Filed Sept. 28, 1934.

The United States, one of the defendants in the above-entitled cause, for answer to the amended petition filed therein against it, answers and says:

I

United States admits for the purposes of this suit that the facts alleged in the opening paragraph and in paragraphs 1 and 2 of the amended petition are true.

II

Answering paragraphs 3 and 4 of the amended petition, United States says that it has not sufficient knowledge of the matters, things and conclusions therein alleged to enable it either to admit or deny the allegations of said paragraphs, and as to them it neither admits nor denies; but,

United States says that the allegations of said paragraphs, [fol. 49] even if true, are irrelevant and immaterial to any issue which may properly be raised in this suit.

III

United States admits that the facts alleged in paragraph 5 of the amended petition are true, with this exception: It says that it is without sufficient knowledge to enable it either to admit or deny the following allegations of said paragraph:

At all times said charges have been charged against the live stock handled in the stockyards and have been collected by the Yards Company from the consignees of said live stock. Said charges have never been billed against or paid by petitioners; nor have petitioners ever received any of said charges, they being made for services rendered and facilities furnished by the Yards Company after the live stock has been placed in suitable unloading pens at the stockyards,

and as to said allegations United States neither admits or denies.

IV

Answering paragraph 6 of the amended petition, United States denies the allegation that "each of the petitioners engaged in the line haul transportation of live stock maintains upon its rails in the Chicago switching district suitable and adequate facilities at which shippers and consignees of live stock may ship and receive such live stock without payment additional to the line haul rate on such live stock;" admits that some of the line haul petitioners publish and file with the Interstate Commerce Commission tariffs which purport to offer facilities for loading and unloading shipments of live stock at certain points on their respective lines within the Chicago Switching District, but denies that any of the petitioners maintain suitable and adequate facilities for such purposes at the points mentioned in said tariffs or at any other point in the Chicago Switch- [fol. 50] ing District, except at Union Stock Yards; and United States admits the remaining allegations of said paragraph 6.

V

United States admits the truth of the allegations contained in paragraph 7 of the amended petition, with this exception: It denies the allegation therein that,

> • • • it always having been and now being impossible for petitioners to deliver live stock to consignees at the stockyards without there being a use of the services and facilities of the Yards Company by such live stock after it has been placed in the unloading pens or chutes of the Yards Company,

and alleges that petitioners employ the facilities and services of the Yards Company to perform the duties, imposed upon petitioners by law, of unloading and delivering live stock to consignees at said stockyards.

VI

United States admits that the facts alleged in paragraphs 8, 9 and 10 of the amended petition are true; but for a full, complete and accurate statement of the allegations contained in the complaint and amended complaint of the Hygrade Company, mentioned in said paragraph 8, and of the findings, conclusions and statements of the Commission in its report, mentioned in said paragraph 9, and of the requirements of its said order, mentioned in said paragraph 10, United States respectfully refers the Court to the full text on those three documents which are annexed to and made a part of the amended petition herein as Exhibits 1, 2, 3 and 4, respectively.

[fol. 51]

VII

United States denies the allegation of paragraph 11 of the amended petition; denies that the matters, things and conclusions set forth in the second sentence thereof are relevant or material to the question whether said order of the Interstate Commerce Commission is valid and lawful, and says that said sentence contains purely argumentative and superfluous statements.

VIII

United States denies the allegations of paragraph 12 of the amended petition; denies that the Commission's said

order of July 2, 1934, purports to apply to all live stock in carloads consigned to the Hygrade Company at the stockyards and delivered to that Company at the unloading pens provided for such purposes; admits that intrastate shipments of such live stock is not in this case subject to the Interstate Commerce Act; and alleges that said order applies and was and is intended to apply only to interstate shipments of live stock.

IX

United States denies the allegations of paragraphs 13, 14, 15, 16, 17, 18 and 19 of the amended petition, and denies that said order of the Commission is unlawful or void for the reasons therein alleged or for any other reason.

Further answering said paragraphs and particularly paragraphs 15 and 18, United States alleges that transportation of interstate shipments of live stock, including the unloading and delivery thereof to consignees, and all charges, practices and matters connected therewith are subject to the Interstate Commerce Act and to the jurisdiction of the Interstate Commerce Commission, regardless of [fol. 52] whether such unloading and delivery services, or any part thereof, are performed by petitioners themselves, or for them by the Yards Company, and that, therefore, the Commission did not exceed its power and jurisdiction in making and issuing its said order.

X

United States admits the allegations of paragraph 20 of the amended petition with this exception: It denies that the penalties imposed upon petitioners and their officers and agents for refusal or failure to obey the order of the Commission involved in this suit are those provided by paragraph 17 of section 1 of the Interstate Commerce Act, and alleges that the penalties to which peitioners will be subject for refusal or failure to obey said order are those provided by paragraph 8 of section 16 of said Act.

XI

United States denies the allegations of paragraph 21 of the amended petition and particularly denies that compliance by petitioners with or enforcement of said order

against them will cause them irreparable damage or any other legal injury.

XII

Except as herein expressly admitted, United States denies each and every allegation in the amended petition and in the several parts and paragraphs thereof.

Wherefore, having fully answered the amended petition, United States prays that the relief therein prayed be denied and that the amended petition be dismissed with costs to the petitioners, and that United States have the benefit of such other and further orders, decrees, or relief as may [fol. 53] be just and proper.

Elmer B. Collins, Special Assistant to the Attorney General. Martin Conboy, United States Attorney. Harold M. Stephens, Assistant Attorney General.

[File endorsement omitted.]

[fol. 54] In United States District Court

[Title omitted]

Answer of Interstate Commerce Commission to Amended Petition—Filed Sept. 12, 1934

The Interstate Commerce Commission, hereinafter called the Commission, defendant in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the amended petition contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraph 1, the Commission admits that the order complained of relates to transportation and to a matter complained of in a petition filed with the Commission by Hygrade Food Products Corporation and designated on the docket of the Commission as No. 24375, Hygrade

Food Products Corporation v. The Atchison, Topeka and Santa Fe Railway Company et al.; that said Hygrade Food Products Corporation is a corporation of the State of New York and is a resident of the Southern District of New York, and that, therefore, the venue of this suit is properly laid in this District.

[fol. 55]

II

Answering paragraph 2, the Commission admits, for the purposes of this suit, that the allegations contained therein are true.

III

Answering paragraphs 3 to 8, both inclusive, the Commission admits that on March 23, 1931, the Hygrade Food Products Corporation filed with it a complaint, dated March 17, 1931, a copy of which is incorporated in the petition as "Exhibit 1," pages 19-24 thereof, and that subsequently said complaint was amended, a copy of which amendment is incorporated in the amended petition as "Exhibit 2," pages 25-27 thereof, and the Commission respectfully refers the court to said complaint and to the amendment thereof for full, complete, and accurate information concerning the contents of same.

IV

Answering paragraph 9, the Commission admits and alleges that it made the report of July 25, 1933, entitled No. 24375, Hygrade Food Products Corporation v. Atchison, Topeka & Santa Fe Railway Company et al., a copy of which is incorporated in the amended petition as "Exhibit 3," pages 28-41 thereof; that said report is published at 195 I. C. C. 553, and the Commission respectfully refers the court to said report for full, complete, and accurate information concerning the contents thereof.

V

Answering paragraph 10, the Commission admits and alleges that it made the order dated July 2, 1934, a copy of which is incorporated in the amended petition as "Exhibit 4," pages 42-43, and the Commission respectfully refers the court to the order itself for full, complete, and accurate information as to the contents thereof.

[fol. 56] VI

Further answering paragraphs 1 to 10, both inclusive, the Commission admits and alleges that said report of July 25, 1933, and said order of July 2, 1934, were made in a proceeding then pending before it entitled No. 24375, Hygrade Food Products Corporation v. Atchison, Topeka and Santa Fe Railway Company et al.; that in said proceeding a large volume of testimony and other evidence bearing upon the matters covered by said report and order was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of petitioners herein by their counsel; that in said proceeding questions relating to said matters were fully argued, both orally and in briefs, and were submitted to the Commission for determination, whereupon the Commission determined said matters and entered and served upon the parties the aforesaid report and order; that said report and order include the Commission's findings of fact, decisions, conclusions, and requirements, and that upon the evidence aforesaid, and as shown in and by said report, the Commission made the findings and stated the conclusions upon which its said order of July 2, 1934, was and is based.

The Commission further alleges that the findings and conclusions in said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted to the Commission in said proceeding as aforesaid.

The Commission further alleges that in making said report and order it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the petitioners herein by their counsel, including matters covered by the allegations of the amended petition herein.

[fol. 57] The Commission further alleges that said order was not made or entered either arbitrarily or unjustly or contrary to the relevant evidence or without evidence to support it, and that in making said order the Commission did not exceed the authority which had been duly conferred upon it or exercise that authority in either an unreasonable or arbitrary manner.

VII.

Answering paragraphs 11 to 21, both inclusive, the Commission denies that said order of July 2, 1934, is either un-

lawful or invalid or void for the reasons set forth in said paragraphs or elsewhere in the petition, or for any other reason.

VIII

Further answering paragraph 12, the Commission alleges that said order applies only to interstate transportation, and denies that said order has or was intended to have any application to shipments of livestock originating at points in Illinois and moving wholly in intrastate transportation within the State of Illinois.

IX

Further answering paragraphs 16, 17, 18, and 19, the Commission denies that said order of July 2, 1934, if permitted to remain in effect, will operate either to confiscate the property of the petitioners, or to deprive them of their property without due process of law and without compensation, in violation of the provisions of the Fifth Amendment to the Constitution of the United States.

X

Further answering paragraph 20, the Commission admits that the effective date of said order of July 2, 1934, is September 20, 1934; and that the Interstate Commerce Act, in paragraph 8 of section 16, provides for the imposition of penalties for disobedience of orders of the Commission such [fol. 58] as the aforesaid order of July 2, 1934.

XII

Further answering paragraph 21, the Commission denies the truth of the allegations therein, and particularly denies that said order of July 2, 1934, will subject petitioners, or any of them, either to irreparable damage or to any legal injury.

XII.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the amended petition in so far as they conflict either with the allegations herein or with either the statements or conclusions of fact included in the aforesaid report and order,

which said report and order are hereby referred to and made a part of this answer.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that the amended petition herein be dismssed.

Interstate Commerce Commission, by J. Stanley Payne, Assistant Chief Counsel. Daniel W. Knowlton, Chief Counsel, Of Counsel.

[fol. 58½] *Duly sworn to by Patrick J. Farrell. Jurat omitted in printing.*

(File endorsement omitted.)

[fol. 59] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER TO SHOW CAUSE—Filed Oct. 31, 1934

Whereas, in the above entitled suit application has been made to the undersigned, a District Judge of the United States for the Southern District of New York for a permanent injunction enjoining, setting aside, suspending and annulling a certain order made by the Interstate Commerce Commission as of the date of July 2, 1934, and

Whereas, an amended verified petition praying for such permanent injunction, enjoining, setting aside, suspending and annulling the enforcement, operation and execution of said order as set forth in said petition has been filed with the Clerk of this Court, and

Whereas, it has been made to appear from said verified petition that the petitioner may be entitled to the permanent injunction prayed for therein, it is

Ordered, that the respondents herein, the United States of America and the Interstate Commerce Commission, appear before the undersigned and two other judges, said judges having then been called by the undersigned to his [fol. 60] assistance to hear and determine said petition in accordance with the provisions of an Act of Congress of October 22, 1913, at the U. S. Court House and Post Office

Building, Room 235, in the Borough of Manhattan, City of New York and State of New York, September 11, 1934, at 10:30 o'clock in the forenoon or as soon thereafter as counsel can be heard and then and there show cause before said Court and judges so convoked or so called together, why the injunction prayed for in said petition should not issue, and it is further

Ordered, that a copy of this order with the petition attached thereto be served upon the Attorney General of the United States and on the Secretary or Chief Counsel of the Interstate Commerce Commission and that notice of this hearing be served upon them at least five days before said September 11, 1934, as by said statute made and provided.

Dated at New York, N. Y., this 4th day of September, 1934.

Alfred C. Coxe, United States District Judge.

[File endorsement omitted.]

[fol. 61] In United States District Court

[Title omitted]

Intervention of Union Stock Yard and Transit Co.—Filed Nov. 1, 1934

Comes now The Union Stock Yard and Transit Company of Chicago by its attorneys, Luther M. Walter, of Chicago, and Charles E. Cotterill, of New York City, and says that it was a party defendant in the proceedings before the Interstate Commerce Commission out of which eventuated the order of such Commission that is involved in the above entitled proceedings; that the order of the Commission is directed to The Union Stock Yard and Transit Company of Chicago along with other named defendants before the Commission; that because of the foregoing it has an interest in these proceedings before this Honorable Court; and that in view of the foreging, under the statutes of Congress, The Union Stock Yard and Transit Company of Chicago is entitled to be a party to these proceedings as of right and so desires. Therefore, such The Union Stock

Yard and Transit Company of Chicago now becomes a [fol. 62] party to these proceedings before this Honorable Court by this intervention and respectfully avers that such order of the Interstate Commerce Commission as so directed to it and if so applied to it is and would be wholly null and void.

The Union Stock Yard and Transit Company of Chicago, by Luther M. Walter, Chas. E. Cotterill, 70 East 45th Street, Its Attorneys.

Dated October 2, 1934.

The foregoing is approved and The Union Stock Yard and Transit Company of Chicago is made a party to the above entitled proceedings.

Jno. C. Knox.

Dated October 2, 1934.

[fol. 63] Service of the above is acknowledged this date of October 2, 1934.

Elmer B. Collins, Attorney for the United States. J. Stanley Payne, Attorneys for the Interstate Commerce Commission. Hornblower, Miller, Miller & Boston, Attorney- for Hygrade Food Products Corporation. F. H. Towner, Attorney for Trunk Line Railroad, Petitioners.

[File endorsement omitted.]

[fol. 64] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR ORDER GRANTING LEAVE TO INTERVENE TO HYGRADE FOOD PRODUCTS CORPORATION—Filed Oct. 31, 1934

To the Honorable the Judges of the District Court of the United States, for the Southern District of New York:

Your petitioner, Hygrade Food Products Corporation, respectfully shows to this Court and alleges:

(1) That your petitioner is a corporation duly organized and existing under the laws of the State of New York.

(2) That the above-entitled suit was commenced on or about August 15, 1934, by the filing in this Court of a petition for the purpose of enjoining, setting aside, annulling and suspending a certain order of the Interstate Commerce Commission entered July 2, 1934, in a proceeding before said Commission designated on the docket of said Commission as "No. 24375, Hygrade Food Products Corporation v. The Atchison, Topeka and Santa Fe Railway Company, et al."

(3) That on or about September 3, 1934, the petitioners in the above-entitled suit filed in this Court an amended petition for the purpose of enjoining, setting aside, annulling, and suspending a certain order of the Interstate Commerce [fol. 65] Commission entered July 2, 1934, in a proceeding before said Commission designated on the docket of said Commission as "No. 24375, Hygrade Food Products Corporation v. The Atchison, Topeka and Santa Fe Railway Company, et al."

(4) That your petitioner was the complainant before said Commission in said docket No. 24375, that said order of July 2, 1934, was issued in favor of your petitioner; that your petitioner is the only party which will be benefited by the enforcement of said order of July 2, 1934, and that your petitioner has an interest in this suit.

Wherefore your petitioner prays that an order be entered herein permitting your petitioner to intervene as a party defendant in this cause with the right to answer the amended petition filed herein as set forth in Exhibit A attached hereto, and to plead further and be heard in all matters arising in this cause, and that your petitioner be entitled to notice of all proceedings herein and that your petitioner have such other and further relief as to this Court may seem just and proper.

Dated New York, N. Y., October 1, 1934.

Hygrade Food Products Corporation, by Samuel Slotkin, President. Hornblower, Miller, Miller & Boston, Solicitors for Petitioner. Nathan L. Miller, Charles A. Boston, Harold J. Gallagher, Of Counsel.

[fol. 66] *Duly sworn to by Samuel Slotkin. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 67] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING LEAVE TO INTERVENE TO HYGRADE FOOD PRODUCTS CORPORATION—Filed Oct. 31, 1934

This cause came on to be further heard at this term, and thereupon, upon consideration thereof, and upon the subjoined consent of the solicitors for all parties hereto, it was

Ordered, Adjudged and Decreed as follows:

(1) That Hygrade Food Products Corporation be and it hereby is permitted to intervene in this action as a party defendant, and to plead as set forth in Exhibit A attached to its petition filed herein, and to plead further and be heard on all matters arising in this cause.

(2) That all notices of further motions or proceedings in the above entitled cause shall be served upon Messrs. Hornblower, Miller, Miller & Boston, 15 Broad Street, New York City, solicitors for said Hygrade Food Products Corporation, pursuant to the rules and practices of this Court.

Dated: New York, N. Y., October 2, 1934.

Jno C. Knox, United States District Judge for the Southern District of New York.

[fol. 68] The undersigned hereby consent to the entry of the within order.

Frank H. Towner, Solicitor for Petitioners. Elmer B. Collins, Solicitor for Defendant, The United States of America. J. Stanley Payne, Solicitor for Defendant, Interstate Commerce Commission.

[File endorsement omitted.]

[fol. 69] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERVENOR, HYGRADE FOOD PRODUCTS CORPORATION—Filed Oct. 31, 1934

Hygrade Food Products Corporation, intervenor as a party defendant in this cause (hereinafter sometimes called

"Intervenor"), for answer to the amended petition filed herein, answers and says:

(1) Intervenor admits that the facts alleged in paragraph (1) of said amended petition are true.

(2) Answering paragraph (2) of said amended petition, Intervenor denies that all live stock received at the stockyards of The Union Stock Yard & Transit Co. (hereinafter in this answer called the "Yards Company"), is fed, watered, weighed and otherwise cared for and bought and sold; and admits that all the other allegations contained in said paragraph (2) of the amended petition are true.

(3) Answering paragraph (3) of said amended petition, Intervenor admits that it has purchased live stock in Illinois, Iowa and other states, which live stock has been [fol. 70] shipped to Intervenor at Chicago over the railroads of petitioners, and alleges that all the other allegations contained in said paragraph (3) are irrelevant and immaterial to any issue which may properly be raised in this suit and, therefore, neither admits or denies said allegations.

(4) Answering paragraph (4) of said amended petition, Intervenor alleges that the allegations contained in said paragraph (4) are irrelevant and immaterial to any issue which may properly be raised in this suit, and, therefore, neither admits or denies said allegations.

(5) Answering paragraph (5) of said amended petition, Intervenor denies that the stockyards of the Yards Company are exclusively public stockyards subject to the provisions of the Packers and Stockyards Act of 1921; further answering said paragraph (5), Intervenor admits that the Yards Company now imposes, and has imposed during the period referred to in the complaint described in paragraph (1) of the amended petition, certain yardage charges on all live stock handled in the stockyards and that said yardage charges have been collected and are being collected from the consignee of said live stock. Intervenor alleges that it is without knowledge of all the other allegations contained in paragraph (5) of said amended petition and as to them Intervenor neither admits or denies.

(6) Answering paragraph (6) of the amended petition, Intervnor denies the allegation that "each of the petitioners

engaged in the line haul transportation of live stock main-
[fol. 71] tains upon its rails in the Chicago switching district suitable and adequate facilities at which shippers and consignees of live stock may ship and receive such live stock without payment additional to the line haul rate on such live stock;" admits that some of the line haul petitioners publish and file with the Interstate Commerce Commission tariffs which purport to offer facilities for loading and unloading shipments of live stock at certain points on their respective lines within the Chicago Switching District, but denies that any of the petitioners maintain suitable and adequate facilities for such purposes at the points mentioned in said tariffs or at any other point in the Chicago Switching District, except at Union Stock Yards; and Intervenor admits the remaining allegations of said paragraph (6).

(7) Answering paragraph (7) of said amended petition, Intervenor denies the allegation thereof that "it always having been and now being impossible for petitioners to deliver live stock to consignees at the stockyards without there being a use of the services and facilities of the Yards Company by such live stock after it has been placed in the unloading pens or chutes of the Yards Company", and alleges that petitioners employ the facilities and services of the Yards Company to perform the duties imposed upon petitioners by law of unloading and delivering live stock to consignees at said stockyards; Intervenor admits all of the other allegations contained in said paragraph (7) of the amended petition.

[fol. 72] (8) Intervenor admits that the facts alleged in paragraphs (8), (9) and (10) of the amended petition are true; but for a full, complete and accurate statement of the allegations contained in the complaint and amended complaint of the Intervenor, mentioned in said paragraph (8), and of the findings, conclusions and statements of the Commission in its report, mentioned in said paragraph (9), and the requirements of its said order, mentioned in said paragraph (10), Intervenor respectfully refers the Court to the full text on these three documents which are annexed to and made a part of the amended petition herein as Exhibits 1, 2, 3 and 4, respectively.

(9) Intervenor denies the allegations contained in paragraph (11) of the amended petition.

(10) Intervenor denies the allegations of paragraph (12) of the amended petition; denies that the Commission's said order of July 2, 1934, purports to apply to all live stock in carloads consigned to the Hygrade Company at the stockyards and delivered to that Company at the unloading pens provided for such purposes; admits that infrastate shipments of such live stock is not in this case subject to the Interstate Commerce Act; and alleges that said order applies and was and is intended to apply only to interstate shipments of live stock.

(11) Intervenor denies the allegations of paragraphs (13), (14), (15), (16), (17), (18) and (19) of the amended petition, and denies that said order of the Commission is unlawful or void for the reasons therein alleged or for [fol. 73] any other reason.

Further answering said paragraphs and particularly paragraphs (15) and (18), Intervenor alleges that transportation of interstate shipments of live stock, including the unloading and delivery thereof to consignees, and all charges, practices and matters connected therewith are subject to the Interstate Commerce Act and to the jurisdiction of the Interstate Commerce Commission, regardless of whether such unloading and delivery services, or any part thereof, are performed by petitioners themselves, or for them by the Yards Company, and that, therefore, the Commission did not exceed its power and jurisdiction in making and issuing its said order.

(12) Intervenor denies the allegations of paragraphs (20) and (21) of the amended petition.

(13) Except as herein expressly admitted, Intervenor denies each and every allegation in the amended petition and in the several parts and paragraphs thereof.

Wherefore, Intervenor prays that the relief prayed for in said amended petition be denied and that the amended petition be dismissed with costs, and that Intervenor have

the benefit of such other and further orders, decrees, or relief as may be just and proper.

Hygrade Food Products Corporation, by Samuel Slotkin, President. Hornblower, Miller, Miller & Boston, Solicitors for Intervenor. Nathan L. Miller, Harold J. Gallagher, Edward M. Boyne, of Counsel.

[fol. 74] *Duly sworn to by Samuel Slotkin. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 75] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

In Equity

No. 78-351

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, et al., Petitioners,

against

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

Before Martin T. Manton, Circuit Judge; John C. Knox and Henry W. Goddard, District Judges, Composing a Court Convened Pursuant to §380 of the United States Code

This suit is filed pursuant to the provisions of the Urgent Deficiencies Appropriation Act (38 Stat. 219, 28 U. S. C. 41 [28]-48) to set aside and enjoin the enforcement of an order of the Interstate Commerce Commission. Dismissed.

Silas H. Strawn, Esq., Ralph M. Shaw, Esq., E. A. Boyd, Esq., P. F. Gault, Esq., Walter McFarland, Esq., J. N. Davis, Esq., Wallace Hughes, Esq., D. P. Connell, Esq., James Stillwell, Esq., L. H. Strasser, Esq., Frank H. Towner, Esq., Solicitors for Petitioners.

[fol. 76] J. Stanley Payne, Esq., Assistant Chief Counsel, Interstate Commerce Commission; Daniel W. Knowlton, Esq., Chief Counsel, of Counsel. Hornblower, Miller, Miller & Boston, Esqs., Solicitors for Intervenor, Hygrade Food Products Corp.; Nathan L. Miller, Esq., Harold J. Gallagher, Esq., Edward M. Boyne, Esq., of Counsel. Charles E. Cotterill, Esq., Luther M. Walter, Esq., Solicitors for Intervenors, Union Stock Yard and Transit Company of Chicago; Mark W. Potter, Esq., of Counsel.

OPINION—Filed Oct. 30, 1934

MANTON, Circuit Judge:

The suit is brought under the Urgent Deficiencies Appropriation Act to set aside an order of the Interstate Commerce Commission which was made on application of the Hygrade Food Products Corp., an intervenor herein. The complainants were ordered to cease and desist from practices which subjected the Hygrade Food Products Corp. to the payment of yardage charges on live stock consigned to it at the Union Stockyards in Chicago, in instances where delivery is taken at unloading pens provided for such purpose. The order of the Commission does not apply to livestock, delivery of which is taken at holding pens, as distinguished from unloading pens. The intervenor, Hygrade Food Products Corp. operates a packing plant adjacent to the Union Stock Yards and purchases much of its livestock from points outside of Illinois. Shipments of this livestock are carried into the Yards under an arrangement between the Yards Company and the railroads. The cars are placed at unloading platforms of the Yards Company which performs the unloading service for [fol. 77] the railroads at the latter's expense. The animals are taken from the cars into unloading pens, and if the consignees are not there at the time of the unloading, they are removed almost immediately into holding pens where there are facilities for feeding, watering, and otherwise caring for them. If the consignees are present at the time of unloading, they take delivery of the stock at the unloading pens. Whether the consignees take delivery of the livestock at the unloading pens or at the holding pens, they

have been subjected to certain yardage charges made by the Yards Company, and this has been so whether the holding pens service is given to the livestock or otherwise.

The Hygrade Corporation did not object to yardage charges where delivery was taken at the holding pens since actual service was rendered, but has succeeded before the Commission in avoiding such charges where delivery is taken at unloading pens.

The Interstate Commerce Commission found the Yards Company to be a livestock terminal for the line haul carriers bringing livestock to Chicago, and that consignees were entitled under § 15(5) of the Interstate Commerce Act (41 Stat. 456, 484, U. S. C. Title 49) to delivery at pens, suitable for proper delivery, without charge, and that the mere placement therein of live stock constituted no assessable service rendered by the Yards Company.

The decision of the Commission also provides that a charge may rightfully be made by the Yards Company if delivery at the unloading pens is not taken within a reasonable time, which time, due to the peculiar nature of the business, may be but a matter of minutes. The order is directed against the line haul carriers and the Yards Com-
[fol. 78] pany and it is they who ask relief in this suit.

It is argued by the complainants that the Commission was without jurisdiction to make the order but the Commission has answered that Secs. 1(6) and 15(1) of the Interstate Commerce Act (41 Stat. 456, U. S. Code, Title 49) vest jurisdiction in it. Sec. 1(6) declares that all common carriers subject to its provisions shall "establish, observe and enforce * * * just and reasonable * * * practices affecting rates * * * the manner and method of * * * delivering property for transportation * * * and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property * * * and every unjust and unreasonable * * * practice is prohibited." Sec. 15(1) provides for the enforcement of the provisions of § 1(6) and that if after a full hearing, the Interstate Commerce Commission believes any practice to be unjust or unreasonable, it shall order the carrier or carriers to cease violations thereof and conform to a practice prescribed by the Interstate Commerce Commission as just and reasonable. Matters concerning rates may constitute an unjust practice. Adams v. Mills, 286 U. S. 397.

It is also said that the order is uncertain and indefinite and therefore void because (a) it does not state what is a reasonable time within which the intervenor must accept delivery in order to be relieved of the payment of the yardage charges; (b) it does not state whether the Yards Company is or is not a common carrier, and (c) it does not state what shall become of the yardage charges after the complainants and the Yards Company are required to cease [fol. 79] the practice whereby they have imposed such charges upon the Hygrade Corporation. Also, it is argued, that the order attacked herein was not made in a practice case, as so treated by the Commission, but a rate case, and that the order of the Commission is therefore void in that it does not determine that the present rates on live stock carriage are adequate to enable the complainants to absorb the yardage charges of the Yards Company.

Lawful yardage charges, such as those involved in keeping the animals in holding pens, may well be a matter under the jurisdiction of the Secretary of Agriculture by virtue of the Packers and Stockyards Act (42 Stat. 159, U. S. C. Title 7), and not under the cognizance of the Interstate Commerce Commission. But § 226 of the Packers Act states that "nothing in this Act shall affect the power or jurisdiction of the Interstate Commerce Commission nor confer on the Secretary (of Agriculture) concurrent power or jurisdiction over any matter within the power or jurisdiction of such Commission." It is thus apparent that if the jurisdiction of the Interstate Commerce Commission is established, jurisdiction of the Secretary of Agriculture must give way thereto.

The Interstate Commerce Commission, by virtue of §§ 13(1) and 15(1) of the Interstate Commerce Act, has been given jurisdiction over unreasonable practices of carriers engaged in interstate transportation. This has application to the order entered herein, for the movement of live stock into unloading pens constitutes a part of their transportation; it is but the delivery of the consignee's shipment. Section 1(3) defines "transportation" as "all [fol. 80] services in connection with the receipt, delivery • • • storage, and handling of property transported".

It is said that the reasonable time within which the consignee must accept delivery of live stock consigned to it, to avoid the imposition of the yardage charges, is so indefinite as to render the order void. What constitutes a

reasonable time varies with the volume of live stock received; whether the run was light or heavy. The General Manager, and Vice President, of the Yards Company stated that in the ordinary course of delivery, animals are taken at the unloading pens, but that if this is to be done it must be done almost simultaneously with the unloading of animals into the pens. The immediate removal of the animals from the unloading pens is absolutely necessary in order to preserve an even flow of live stock from cars into the yards. Moreover, he said, when questioned as to whether the animals ever remain longer in the unloading pens, that they did during the night, and that when the last train comes in they remain some time in these pens; they might remain for 4 or 5 hours, but it was not usual.

The order is not indefinite in determining whether the Yards Company is a common carrier. Heretofore the Yards Company was held to be a common carrier. United States v. Union Stock Yard, 226 U. S. 286. It was not essential to make such a finding here to support the order granted. The Commission found that the Yards Company was the live stock terminal for all the complaining carriers. The Yards Company provided for the carriers the means of making deliveries of live stock to the consignees [fol. 81] at this public yard. But this delivery was a part of the transportation and of the duty of the carrier. Covington Stock Yards Co. v. Keith, 139 U. S. 128; Adams v. Mills, 286 U. S. 397.

It is also said that the order is erroneous because it fails to declare what should be done with, or take the place of, the charges made against the Hygrade Company with respect to the live stock consigned to it in Chicago. This was left to the discretion of the carriers, and the Yards Company, to be disposed of by some agreement among them with respect to the amount to be paid by the complainants to the Yards Company for the performance of this delivery service which is part of the duty of through transportation to be performed by the carriers. If the parties do not agree, a proceeding under paragraph 6 of § 15 of the Interstate Commerce Act might be instituted for the purpose of establishing just, reasonable, and equitable divisions of rates. If the present rates are inadequate, they may be raised in a suitable rate case brought before the Commission. The question here is not the rea-

sonableness of the charges but the unfairness of the practice generally pursued in collecting this extra charge for delivery. Adams v. Mills, 286 U. S. 397; United States v. Pa. R. R., 266 U. S. 191; Chicago, I. & L. Ry. v. United States, 270 U. S. 287.

After the Yards Company was declared a common carrier, in United States v. Union Stock Yard (226 U. S. 286), it made changes in the terms of its leases, but whether or not it changed its position as a common carrier we need not determine now, for it, in the performance of this duty, [fol. 82] rendered transportation services. United States v. Brooklyn Terminal, 249 U. S. 296. To be sure, it performed yardage services when it supplied holding pens, where care and attention to the animals were made possible, such as feeding, watering and bedding.

But, it is also true that the live stock moved over the rails owned by the Yards Company, though subleased to the Chicago & Indiana Railway Company, under a through route; and the Commission has found that, in Chicago, this is the only practical method of taking care of the volume of live stock traffic which moves to and from that city every day. When live stock is placed by the line haul carriers at the unloading platforms of the Yards Company, it is unloaded by employees of the Yards Company, who inform the consignees of its arrival. The Yards Company furnishes weights on which the railways base their freight charges and collects such charges from the consignees on account of the carriers and remits them to the carriers. As stated in Adams v. Mills (supra), "the yards are, in effect, terminals of the railroads."

The Yards Company might well have been found to be a common carrier even though it be but an agent of the complainants in the performance of their transportation service. United States v. Brooklyn Terminal, supra; Adams v. Mills, supra. That the carriers employ the yards of the Yards Company and the services of their employees in effecting delivery of live stock as part of their transportation service admits of no doubt. The evidence is clear that these yardage charges are imposed, collected [fol. 83] and retained by the Yards Company and are for services rendered to the complainants in the performance of their transportation duties. It is proper that the order of the Commission should be directed against the Yards Company. It was an unlawful practice for the Yards Com-

pany as well as the complainants to thus assess and make charges in addition to the prescribed transportation rates. They were indulging in a practice condemned by the Commission and the joint order against them is proper. North. Penna. R. R. v. Commercial Bank, 123 U. S. 727, 734; Covington Stock Yard Co. v. Keith, supra.

Congress recognized this duty when it legislated as to the jurisdiction of the Interstate Commerce Commission (Act of Feb. 4, 1887, ch. 104, § 1, 24 Stat. 379; Act of June 29, 1906, ch. 3591, 34 Stat. 584; Act of Feb. 8, 1920, ch. 91, § 400, 41 Stat. 474), and it was the intention of Congress to so regulate commerce as to place the regulation of all the services performed by common carriers by rail in the transportation of property with the Interstate Commerce Commission. Chicago, C. C. & St. L. Ry. Co. v. Dettlebach, 239 U. S. 592.

Complainants contend that § 15(5) of the present act to regulate commerce limits their duty with respect to live stock delivered at public stockyards, and they say that under this section their transportation duty ends when they have unloaded the live stock at suitable pens in the public stock yard. Section 15(5) expressly provides that the transportation of live stock shall include the service of unloading the live stock into suitable pens at the public stock yard. This is the same language with which the [fol. 84] term "railroad" and the term "transportation" are defined in para. 3 of § 1 of the Act, where it is provided that these terms shall "include" various services and facilities therein mentioned.

Complainants argue that this is a rate case, and the order entered reduces rates without making an appropriate finding as to their adequacy. What was before the Commission was a practice violation not a rate controversy. Los Angeles Switching Case, 234 U. S. 294. It was not a contest between carriers as to who shall bear the expense entailed in delivering live stock to the Hygrade Company. As said in Adams v. Mills (supra), "the reasonableness of the charge itself, and the complementary question whether the railroad should be required to absorb it, were in no way involved before the Commission; and that tribunal properly made no finding with respect thereto."

We think the Commission properly ruled that § 15(5) of the Act to regulate commerce did not limit its jurisdiction

over terminals and terminal facilities of the line haul carriers, and that its jurisdiction extended as provided for in para. 3, § 1 of the Act.

The suit is dismissed.

Dated: October 30th, 1934.

Martin T. Manton, Circuit Judge, John C. Knox, District Judge, Henry W. Goddard, District Judge.

[fol. 85] [File endorsement omitted.]

[fol. 86] In United States District Court

The Atchison, Topeka and Santa Fe Railway Company, et al., Petitioners,

vs.

The United States of America and Interstate Commerce Commission, Defendants

Final Decree—Filed Nov. 3, 1934

This cause having come on for final hearing by the special Court of three judges, constituted as required by the Act of October 22, 1913 (c. 32, 38 Stat. 208, 220, U. S. C., Title 28, sec. 47) and the Court, upon consideration of the evidence and the arguments of counsel orally and on brief, having concluded, found and determined, for the reasons set forth in the opinion heretofore filed by this Court herein on October 31, 1934, that the petition should be dismissed for want of equity at the cost of the petitioners, it is

Ordered, Adjudged and Decreed, That the petition be, and the same is hereby, dismissed, for want of equity, at the cost of petitioners.

This 2nd day of November, 1934.

Martin T. Manton, United States Circuit Judge, Jno. C. Knox, United States District Judge, Henry W. Goddard, United States District Judge.

[fol. 87] Approved as to form.

Elmer B. Collins, Special Assistant to the Attorney General, For the United States. J. Stanley Payne, Assistant Chief Counsel, Interstate Commerce Commission. Hornblower, Miller, Miller & Boston, Solicitors for Hygrade Food Products Corporation.

[File Indorsement omitted.]

[fol. 88] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed Nov. 3, 1934

To:

Elmer B. Collins, Counsel for United States, Department of Justice, Washington, D. C.

J. Stanley Payne, Counsel for Interstate Commerce Commission, Washington, D. C.

Hornblower, Miller, Miller & Boston, Counsel for Hygrade Food Products Corporation, 15 Broad Street, New York, N. Y.

Charles E. Cotterill, Counsel for Union Stock Yard & Transit Company, 70 East 45th Street, New York, N. Y.

Luther M. Walter, Counsel for Union Stock Yard & Transit Company, Room 1522, #38 S. Dearborn Street, Chicago, Ill.

You and each of you are hereby notified that on the 2nd day of November, 1934, at 10 o'clock a. m. or as soon thereafter as counsel can be heard, we shall present to the Honorable Martin T. Manton, United States Circuit Judge, and the Honorable John C. Knox and Honorable Henry W. Goddard, United States District Judges, the petition of the petitioners herein for an appeal from the final order or decree made and entered in the District Court in the above entitled cause on the 2nd day of November, 1934, to the Supreme Court of the United States; and ask that an order be entered herein allowing said appeal and making the same returnable within thirty (30) days from November 2, 1934, a copy of said petition for appeal and assignment of errors therein referred to and a copy of said order being attached hereto.

Frank H. Towner, Solicitor for Petitioners.

[fol. 89] Received a copy of the foregoing notice, together with a copy of the petition for appeal, assignment of errors

and order therein referred to this 1st day of November, 1934.

Elmer B. Collins, Solicitor for United States. J. Stanley Payne, Solicitor for Interstate Commerce Commission. Hornblower, Miller, Miller & Boston, Solicitor for Hygrade Food Products Corporation. Luther M. Walter, Chas E. Cotterill, Solicitors for Union Stock Yard & Transit Company of Chicago.

[File Indorsement omitted.]

[fol. 90] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed Nov. 3, 1934

To The Honorable Martin T. Manton, United States Circuit Judge; The Honorable John C. Knox; The Honorable Henry W. Goddard, United States District Judges.

Now come The Atchison, Topeka and Santa Fe Railway Company, et al., petitioners herein, by their solicitor, and feeling aggrieved by the final order or decree of the District Court made and entered herein on to wit, November 2, 1934, do hereby appeal therefrom to the Supreme Court of the United States, and pray that their appeal be allowed and that citation be issued as provided by law.

The particulars wherein they consider the final order or decree erroneous are set forth in the assignment of errors on file, to which reference is made. They pray that a transcript of the record, proceedings and papers on which the final order or decree was made and entered, duly authenticated, may be transmitted to the Supreme Court of the United States, and they further pray that a proper order relating to the security to be required of them be made.

Frank H. Towner, Solicitor for Petitioners, Atchison, Topeka & Santa Fe Railway Company, et al.

[File Indorsement omitted.]

[fol. 91] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Nov. 3, 1934

Now come The Atchison, Topeka and Santa Fe Railway Company, et al., petitioners herein, and present with their petition for appeal herein this assignment of errors and say that in the record and proceedings in the above-entitled cause and the decree made and entered against them therein on the 2nd day of November, 1934, there is error in the particulars hereinafter set forth.

The District Court of the United States for the Southern District of New York erred in making the decree and in dismissing the petition herein in the following respects:

1. It erred in finding that the order of the Interstate Commerce Commission made on July 2nd, 1934, is not so indefinite and uncertain as to be invalid.

2. It erred in finding that it was not essential for said Commission to make a finding with respect to the common carrier status of the Union Stock Yard & Transit Company of Chicago.

3. It erred in finding that there was no obligation upon said Commission to definitely prescribe in said order of [fol. 92] July 2nd, 1934, the time and place at which the common carrier obligations of petitioners terminated.

4. It erred in finding that said order of July 2nd, 1934 was not invalid because of the failure of the Commission to make a finding with respect to the disposition to be made of the yardage charges of the Union Stock Yard & Transit Company of Chicago.

5. It erred in finding that said order of the Commission made on July 2nd, 1934 was not invalid because of the failure of said Commission to state in what respects and in what way the practices of petitioners violated the law.

6. It erred in finding that the Union Stock Yard & Transit Company of Chicago rendered transportation services upon the shipments of live stock dealt with in said order of said Commission made on July 2nd, 1934.

7. It erred in finding that the facilities of the Union Stock Yard & Transit Company of Chicago constitute the live stock terminals of petitioners in Chicago, Illinois.

8. It erred in finding that petitioners employed the facilities of the Union Stock Yard & Transit Company of Chicago and the services of its employees in effecting the delivery of live stock as a part of petitioners' transportation service.

9. It erred in finding unlawful the collection by petitioners and the Union Stock Yard & Transit Company of Chicago of the yardage charges dealt with in the Commission's order of July 2nd, 1934.

10. It erred in finding that the decision of said Commission was one in which said Commission made a finding of unreasonableness of a practice under Sections 1 and 15 of [fol. 93] the Act to Regulate Commerce.

11. It erred in finding that the practice condemned by said Commission in its order of July 2, 1934, was an unreasonable and unlawful practice.

12. It erred in finding that the case presented to the Commission in which said order of July 2nd, 1934 was entered was a case involving an unlawful practice and that it was not a case involving a rate controversy.

13. It erred in finding that under paragraph 3 of Section 1 of the Act to Regulate Commerce the jurisdiction of the Commission extends beyond a suitable unloading pen in the case of shipments of ordinary live stock in carloads consigned to public stock yards.

14. It erred in failing to find that under paragraph 5 of Section 15 of the Act to Regulate Commerce the transportation of ordinary live stock in carloads consigned to public stock yards ends when such live stock is deposited in a suitable pen at such public stock yards.

15. It erred in finding that the transportation service performed by petitioners upon shipments of ordinary live stock in carloads to the Union Stock Yard in Chicago, Illinois extends beyond suitable unloading pens at such stock yard.

16. It erred in finding or assuming that the record made in the proceedings before the Commission was sufficient to support the order made by the Commission therein on July 2, 1934.

17. It erred in finding that the petition herein should be dismissed.

18. It erred in failing to issue the injunction prayed for in the petition herein.

Wherefore, petitioners pray that said decree entered [fol. 94] herein on the 2nd day of November, 1934, be reversed and that said District Court of the United States for the Southern District of New York be directed to enter a decree granting the petition of petitioners and that said order of the Interstate Commerce Commission be declared void and perpetually set aside, suspended and annulled and that your petitioners be granted such other and further relief as may be appropriate.

Frank H. Towner, Solicitor for Petitioners.

[File indorsement omitted.]

[fol. 95] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR STAY OF ORDER OF INTERSTATE COMMERCE COMMISSION PENDING APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed Nov. 3, 1934

Now come the plaintiffs herein, by their counsel, and present this motion for an order staying the order of the Interstate Commerce Commission made on July 2, 1934 in the proceeding pending before said Commission and known as its Docket 24375, Hygrade Food Products Corporation vs. Atchison, Topeka and Santa Fe Railway Company, pending an appeal herein to the Supreme Court of the United States, and in support of said motion show as follows:

(1) For almost seventy years the uninterrupted practice with respect to deliveries of livestock to consignees at the

Union Stock Yards in Chicago, Illinois, has been for the Union Stock Yard & Transit Company to require payment of its yardage charges by such consignees. Since the effective date of the Packers & Stockyards Act, 1921, those yardage charges have been contained in tariffs of the Union Stock Yard & Transit Company on file with the Secretary of Agriculture. The foregoing practice was begun and has been continued in good faith, and the right of the Union Stock Yard & Transit Company to so collect said yardage charges has never been judicially questioned up to this time. The order of the Commission entered in the proceedings before it requires a change in that practice, to the detriment of the Union Stock Yard & Transit Company and petitioners herein.

[fol. 96] (2) Ever since the effective date of the Packers & Stockyards Act, 1921, the Secretary of Agriculture, with the implied consent of the Interstate Commerce Commission, has exercised jurisdiction over the volume and propriety of the yardage charges so collected by the Union Stock Yard & Transit Company, exercising said authority upon the assumption that it was vested in him by the terms and provisions of said Act. The order of the Commission entered herein arrogates to the Commission some part of the authority heretofore exercised by the Secretary of Agriculture under the Packers & Stockyards Act, and creates a conflict of jurisdiction between two governmental regulatory authorities. Immediate enforcement of the order of the Commission prior to a final decision with respect thereto by the Supreme Court of the United States, would make it necessary for petitioners herein to make some election as to which regulatory authority has the jurisdiction which both now claim.

(3) The legal questions presented in the petition of petitioners to set aside and annul said order of the Interstate Commerce Commission are not free from doubt. The questions presented have not yet been decided by any other court and involve matters of statutory construction which have not heretofore been presented to the Supreme Court of the United States or any other court for construction. That these questions are not free from doubt is indicated by the fact that in the proceedings before the Commission, six Commissioners supported the order attacked herein and

five Commissioners dissented on the ground that the Commission did not have the jurisdiction apparently asserted in the order.

(4) The immediate enforcement of the order herein attacked, if that order should subsequently be set aside, will result in a serious and unnecessary disturbance in the delivery of livestock at the Union Stock Yard in Chicago, [fol. 97] Illinois. That stockyard now handles the largest daily volume of livestock of any stockyard in the United States. As the record before the Commission shows, the volume of shipments at certain hours during each day is so great that the utmost expedition is required both on the part of petitioners and of the Union Stock Yard & Transit Company in handling them in order to avoid delay and consequent damage. If the order of the Commission attacked herein is permitted to become effective pending an appeal herein to the Supreme Court of the United States, the present orderly method of handling such stock will necessarily be disrupted. Petitioners will have to determine whether the order requires them to pay the yardage charges involved to the Yards Company or whether it requires the Yards Company to forego the collection of such charges. The settlement of such a dispute might require considerable time during which petitioners might refuse to pay such yardage charges, and as a result of such refusal, the Union Stock Yard & Transit Company might decline to handle such shipments, or in any case, to deliver them to consignees until its charges were secured to it in some way. Such a development would necessarily result in delay in the handling of livestock shipments to the stockyards at Chicago with consequent damage to the traffic and to the public interest therein.

(5) If the order attacked herein should become effective pending an appeal herein to the Supreme Court of the United States, and if petitioners, in order to avoid the disturbances and disruptions of traffic which would result from their refusal to pay the yardage charges of the Yards Company, should consent to pay such charges pending such appeal, and the order of the Interstate Commerce Commission should, on such appeal, be set aside and annulled, petitioners would sustain irreparable damage in that they would have paid, in attempted compliance with said order, large

amounts of money on behalf of various consignees of shipments transported by them to the Union Stock Yard in Chicago, which amounts they would probably be unable to thereafter recover from such consignees. In any case, [fol. 98] petitioners would be subjected to substantial expense in recovering or attempting to recover any such amounts so paid by them, and such expense could not be recovered by petitioners.

(6) Petitioners herein hereby tender a bond, in an amount to be fixed by this Court, to protect the Hygrade Food Products Corporation in the amount of such yardage charges which will be paid by it during the time consumed in perfecting an appeal herein to the Supreme Court of the United States and in securing the decision of that Court with respect to the validity of the order of the Interstate Commerce Commission. Said Hygrade Food Products Corporation is the only company to which reparation is awarded by the order of the Interstate Commerce Commission attacked in this suit. The giving of such a bond will completely and adequately protect it with respect to any such charges paid by it during the pendency of such appeal should it finally be determined that the said order of the Interstate Commerce Commission is valid.

Wherefore, petitioners pray that an order be entered herein staying the enforcement of the order of the Interstate Commerce Commission made by it on July 2, 1934 in the said proceeding before it, pending an appeal herein to the Supreme Court of the United States and the decision of that court on such appeal.

Frank H. Towner, Counsel for Petitioners.

[File endorsement omitted.]

[fol. 99] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

Equity. No. 78-351

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., Petitioners,

vs.

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

ORDER ALLOWING APPEAL—Filed Nov. 3, 1934

Upon the entering of the final decree in this cause came Frank H. Towner, solicitor and counsel for petitioners and filed their assignment of errors and petition for appeal, and it is hereby

Ordered, That an appeal by petitioners in the above entitled cause to the Supreme Court of the United States from the decree heretofore filed and entered herein on November 2, 1934, be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to the Supreme Court of the United States, said appeal being hereby made returnable thirty (30) days from the date hereof.

It is further ordered that the bond on appeal be and it is hereby fixed at the sum of two hundred fifty dollars ($250).

Martin T. Manton, United States Circuit Judge. Jno. C. Knox, Henry W. Goddard, United States District Judges.

November 2, 1934.

[File endorsement omitted.]

[fols. 100-102] IN UNITED STATES DISTRICT COURT

[Title omitted.]

ORDER STAYING ORDER OF I. C. C.—Filed Nov. 13, 1934

This cause came on to be heard at this term on motion of counsel for the petitioners and thereupon upon consideration thereof, it was

Ordered that the order of the Interstate Commerce Commission made on July 2, 1934, in the proceeding pending before said Commission entitled "Hygrade Food Products Corporation against Atchison, Topeka and Santa Fe Railway Corporation, Docket 24,375," be, and the same hereby is, stayed for a period of 30 days from November 2, 1934, pending the appeal herein to the Supreme Court of the United States, with leave to the petitioners to apply to a Judge of the Supreme Court of the United States for a further stay.

November 13th, 1934.

Martin T. Manton, United States Circuit Judge.
Jno. C. Knox, Henry W. Goddard, United States District Judges.

[File endorsement omitted.]

[fols. 103-106] Bond on appeal for $250.00, approved and filed November 23, 1934, omitted in printing.

[fol. 107] IN UNITED STATES DISTRICT COURT

[Title omitted.]

NOTICE OF MOTION FOR ORDER OF SEVERANCE—Filed Nov. 23, 1934

To: The Union Stock Yard and Transit Company of Chicago, and Charles E. Cotterill and Luther M. Walter, Its Solicitors.

You are hereby notified that on November 2, 1934, in accordance with notice previously served upon you, The Atchison, Topeka and Santa Fe Railway Company; The Baltimore and Ohio Railroad Company; The Baltimore and Ohio Chicago Terminal Railroad Company; The Chesapeake and Ohio Railway Company; The Alton Railroad Company; Charles M. Thomson, as trustee of the railways and property of Chicago and Eastern Illinois Railway Company; Chicago and Erie Railroad Company; Chicago and North Western Railway Company; Chicago, Burlington and Quincy Railroad Company; Chicago Great Western Railroad Company; Chicago, Indianapolis and Louis-

ville Railway Company; Chicago Junction Railway (The Chicago River and Indiana Railroad Company, Lessee); Chicago, Milwaukee, St. Paul and Pacific Railroad Company; The Chicago River and Indiana Railroad Company; Frank O. Lowden, James E. Gorman and Joseph B. Fleming, as trustees of the railways and property of The Chicago, Rock Island and Pacific Railway Company and The Chicago, Rock Island and Gulf Railway Company; Chicago Saint Paul, Minneapolis and Omaha Railway Company; The Cleveland, Cincinnati, Chicago and St. Louis Railway Company (The New York Central Railroad Company, Lessee); Illinois Central Railroad Company; The Michigan Central Railroad Company (The New York Central Railroad Company, Lessee); Minneapolis, Saint Paul & [fol. 108] Sault Ste. Marie Railway Company; The New York Central Railroad Company; The New York, Chicago and St. Louis Railroad Company; The Pennsylvania Railroad Company; and Norman B. Pitcairn and Frank C. Nicodemus, Jr., as receivers of the railways and property of Wabash Railway Company, petitioners herein, presented their petition for appeal to the Supreme Court of the United States from the final decree entered on November 2, 1934 dismissing their petition herein; and that on November 2, 1934 an order was entered herein granting said appeal, a copy of said order having theretofore been served upon you.

You are hereby invited to join in said appeal as a party appellant or be barred therefrom by order of severance in the event you refuse to join in said appeal.

You are further notified that said petitioners will present to the Honorable Martin T. Manton, United States Circuit Judge, and John C. Knox and Henry W. Goddard, United States District Judges, at 10 o'clock in the forenoon, on November 23, 1934, or as soon thereafter as said matter may be heard, in the room usually occupied by them as a court room, in the Old United States Post Office Building, Broadway and Park Place, Borough of Manhatton, City of New York, their motion for an order of severance herein, a copy of said motion and order being served upon you herewith.

The Atchison, Topeka and Santa Fe Railway Company, et al., by Frank H. Towner, Their Solicitor.

Received a copy of the foregoing notice together with a

copy of the motion and order therein referred to, this 15th day of November, 1934.

Chas. E. Cotterill, Mark W. Potter, Solicitors for The Union Stock Yard and Transit Company of Chicago.

[File endorsement omitted.]

[fol. 109] In United States District Court

[Title omitted.]

Motion for Order of Severance—Filed Nov. 23, 1934

Now come The Atchison, Topeka and Santa Fe Railway Company, et al., petitioners in the above-entitled cause, and show to the Court that heretofore, on November 2, 1934, they prayed and were granted on appeal to the Supreme Court of the United States from the final decree entered herein on November 2, 1934, notice of the presentation of the petition for said appeal having been theretofore served upon all parties hereto; that on November 15, 1934, they served upon The Union Stock Yard and Transit Company of Chicago, a party hereto, a notice requesting it to join in such appeal; that said party has failed and refused to join these petitioners in such appeal and that petitioners here offer proof of the facts hereinbefore stated.

Wherefore, these petitioners move the Court for an order herein granting to these petitioners a severance and the right to prosecute their said appeal without joining said The Union Stock Yard and Transit Company of Chicago therein.

The Atchison, Topeka and Santa Fe Railway Company, et al. By Frank H. Towner, Their Solicitor.

[File endorsement omitted.]

[fol. 110] In United States District Court

[Title omitted.]

Order Granting Severance

Upon consideration of the motion filed herein this day by The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Railroad Company; The Balti-

more and Ohio Chicago Terminal Railroad Company; The Chesapeake and Ohio Railway Company; The Alton Railroad Company; Charles M. Thomson, as trustee of the railways and property of Chicago and Eastern Illinois Railway Company; Chicago and Erie Railroad Company; Chicago and North Western Railway Company; Chicago, Burlington and Quincy Railroad Company; Chicago, Great Western Railroad Company; Chicago, Indianapolis and Louisville Railway Company; Chicago Junction Railway (The Chicago River and Indiana Railroad Company, Lessee); Chicago, Milwaukee, St. Paul and Pacific Railroad Company; The Chicago River and Indiana Railroad Company; Frank O. Lowden, James E. Gorman and Joseph B. Fleming, as trustees of the railways and property of The Chicago, Rock Island and Pacific Railway Company and The Chicago, Rock Island and Gulf Railway Company; Chicago Saint Paul, Minneapolis and Omaha Railway Company; The Cleveland, Cincinnati, Chicago and St. Louis Railway Company (The New York Central Railroad Company, Lessee); Illinois Central Railroad Company; The Michigan Central Railroad Company (The New York Central Railroad Company, Lessee); Minneapolis, Saint Paul & Sault Ste. Marie Railway Company; The New York Central Railroad Company; The New York, Chicago and Saint [fol. 111] Louis Railroad Company; The Pennsylvania Railroad Company; and Norman B. Pitcairn and Frank C. Nicodemus, Jr., as receivers of the railways and property of Wabash Railway Company, petitioners herein, for severance and an order allowing them to prosecute their appeal to the Supreme Court of the United States from the final decree entered herein on November 2, 1934 without joining with them The Union Stock Yard and Transit Company of Chicago, and the Court having considered said motion and being advised in the premises, and finding that the said The Atchison, Topeka and Santa Fe Railway Company, et al., petitioners herein, notified all other parties to this cause of the presentation of their petition for said appeal; that said appeal was prayed and an order granting it entered herein in open court, and that said The Union Stock Yard and Transit Company of Chicago has refused to join in said appeal, it is therefore

Ordered that said The Atchison, Topeka and Santa Fe Railway Company, et al., petitioners herein, are hereby

granted a severance, and that they may prosecute their said appeal herein to the Supreme Court of the United States without joining said The Union Stock Yard and Transit Company as a party thereto.

Martin T. Manton, United States Circuit Judge.
Jno. C. Knox, Henry W. Goddard, United States District Judges.

November 23, 1934.

[fol. 112] IN UNITED STATES DISTRICT COURT

[Title omitted.]

NOTICE OF NARRATIVE STATEMENT OF EVIDENCE, ETC.—Filed Dec. 17, 1934

To: United States of America, Interstate Commerce Commission, and Hygrade Food Products Corporation, Defendants herein:

Please take notice that the petitioners (appellants in the above cause) have lodged in the Clerk's office of the United States District Court for the Southern District of New York, at New York City, New York, for the examination of the parties hereto, the narrative statement of evidence to be included in the transcript of record on appeal to the Supreme Court of the United States from the final decree entered in the above proceeding on November 2, 1934.

Further please take notice that on the 17th day of December, 1934, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, at the court room of said United States District Court, in the Old United States Post Office Building, Broadway and Park Place, Borough of Manhattan, City of New York, petitioners (appellants) will move the Court to enter an order approving said narrative statement of evidence and providing for the certification to the Supreme Court of the United States of the exhibits filed upon the trial of said cause in said District Court, said exhibits to be certified and forwarded by the Clerk of the District Court to the Supreme Court of the United States as original exhibits, not as part of the transcript of

record but separately therefrom, a copy of said order being served upon you herewith.

Frank H. Towner, Counsel for Petitioners.

[fol. 113] Received a copy of the foregoing notice and order therein referred to, this 17th day of December, 1934.

Elmer B. Collins, For United States of America. J. Stanley Payne, For Interstate Commerce Commission. Hornblower, Miller, Miller & Boston, For Hygrade Food Products Corporation.

[File endorsement omitted.]

[fol. 114] In United States District Court

[Title omitted.]

Order Approving Narrative Statement of Evidence, etc.—Filed Dec. 18, 1934

This cause coming on for hearing on the motion of petitioners (appellants) for an order approving the narrative statement of evidence filed herein and certifying original exhibits to the Supreme Court of the United States, and the Court being advised in the premises, it is

Ordered:

(1) That the narrative statement of evidence filed herein, and which, with the original exhibits offered in evidence and to be certified separately to the Supreme Court of the United States, is a true and complete statement of all the evidence introduced in this cause and comprises all the evidence offered and received on the trial hereof, be and it is hereby approved.

(2) That the Clerk of this Court, in preparing the transcript of the record on the appeal herein to the Supreme Court of the United States, shall certify to said Court all exhibits and other documents which were attached to petitioners' Exhibit 1 introduced in evidence on the trial of this Court in this Court, the said exhibits so attached to petitioners' Exhibit 1 being marked before the Interstate Commerce Commission as Exhibits 1 to 23, both inclusive,

and including also two additional exhibits furnished to the Interstate Commerce Commission subsequent to the close of the hearing before it; but shall not include the transcript [fol. 115] of oral testimony included in said petitioners' Exhibit 1, for the reason that said testimony has been reduced to narrative form and is being certified and forwarded in the transcript of record; that said exhibits shall be certified and forwarded by the Clerk of this Court to the Supreme Court of the United States as original exhibits, not as part of the transcript of record but separately therefrom, and that any party hereto may refer to said original exhibits in their briefs and arguments with like effect as though they were printed as part of the record.

Martin T. Manton, United States Circuit Judge.
Jno. C. Knox, Henry W. Goddard, United States District Judges.

December 18th, 1934.

[File endorsement omitted.]

[fol. 116] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD

It is hereby stipulated by and between the parties hereto, by their respective counsel, for the purpose of settling the record herein on appeal to the Supreme Court of the United States.

(1) That the narrative statement of evidence filed herein is a true and correct statement in narrative form of the proceedings had and of the testimony introduced on the trial of the above cause and includes a true and correct statement in narrative form of the oral testimony taken by the Interstate Commerce Commission in the proceedings before it known as its Docket 24375, Hygrade Food Products Corporation v. The Atchison, Topeka and Santa Fe Railway Company, et al., the entire record in said proceedings before said Commission having been introduced in evidence in this cause as Petitioners' Exhibit 1.

(2) That the narrative statement of evidence filed herein, which includes a narrative statement of the oral testimony taken by the Interstate Commerce Commission in the proceedings before it known as its Docket 24375, Hygrade Food Products Corporation v. The Atchison, Topeka and Santa Fe Railway Company, et al., sets forth in condensed form all oral testimony offered on the trial hereof which is essential to the decision of the questions presented by the appeal.

(3) That the Clerk of this Court, in preparing the transcript of record on appeal in the above entitled cause to the [fol. 117] Supreme Court of the United States shall certify to said Court the original exhibits and all other documents which were attached to Petitioners' Exhibit 1, introduced in evidence on the trial of said cause, the said Exhibits so attached to Petitioners' Exhibit 1 being marked Exhibits 1 to 23, both inclusive, and also including two additional exhibits furnished to the Interstate Commerce Commission after the conclusion of the hearings before it; but shall not include the transcript of oral testimony included in said Petitioners' Exhibit 1 for the reason that said testimony has been reduced to narrative form and is being certified and forwarded in the transcript of record; that said exhibits and other documents so attached to Petitioners' Exhibit 1 shall be certified and forwarded by the Clerk of this Court to the Supreme Court of the United States as original exhibits, not as part of the transcript of record but separately therefrom, and that any party hereto may refer to said original exhibits and other documents in their briefs and arguments with like effect as though they were printed as part of the record.

Elmer B. Collins, for United States of America. J. Stanley Payne, for Interstate Commerce Commission. Hornblower, Miller, Miller and Boston, for Hygrade Food Products Corporation. Frank H. Towner, for Petitioners (Appellants).

[fol. 118] IN SUPREME COURT OF THE UNITED STATES

October Term, 1934.

No. ——

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL., Appellants,

vs.

UNITED STATES OF AMERICA, ET AL., Appellees.

No. ——

THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, Appellant,

vs.

UNITED STATES OF AMERICA, ET AL., Appellees.

ORDER STAYING ORDER OF I. C. C.

This cause coming on to be heard upon the motions of appellants (petitioners) for the entry of an order staying the enforcement of an order of the Interstate Commerce Commission made by it on July 2, 1934 in the proceedings before it known as its Docket 24375, Hygrade Food Products Corporation vs. Atchison, Topeka and Santa Fe Railway Company, et al., pending appeals to the Supreme Court of the United States and the determination of said appeals in said Court, it is

Ordered that the enforcement, operation and execution of said order of the Interstate Commerce Commission, entered on July 2, 1934, in the said proceedings before it, be and it is hereby stayed during the pendency and until the determination of said appeal by the Supreme Court of the United States, upon condition that appellants (petitioners) file herein, within twenty (20) days herefrom a joint and several bond in the sum of Five Thousand Dollars ($5,000.-00), the obligees in said bond to be the United States of America, Interstate Commerce Commission and Hygrade Food Products Corporation.

It is further ordered that the aforesaid bond shall be conditioned that appellants (petitioners) will prosecute their

[fols. 119 & 120] appeals, with effect and shall pay or cause to be paid all net amounts which may be due from them or any of them to United States of America, Interstate Commerce Commission and Hygrade Food Products Corporation, or any of them, during the period November 5, 1934 until the decision of the Supreme Court of the United States on the appeals taken herein under the order entered by said Intrstate Commerce Commission on July 2, 1934 in said proceedings before it.

Harlan F. Stone, Justice of the Supreme Court of the United States.

November 15, 1934.

[fols.121-126] Bond on stay for $5,000, approved and filed Dec. 3, 1934, omitted in printing.

[fols. 127-129] Citation in usual form showing service on Elmer B. Collins et al. Filed Nov. 20, 1934, omitted in printing.

[fol. 130] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 131] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Equity. No. 78-351.

THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, Petitioner,

vs.

THE UNITED STATES OF AMERICA, ET AL., Defendants.

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed Nov. 27, 1934

To the Clerk of the United States District Court for the Southern District of New York:

SIR: You will please prepare a transcript of record to be transmitted to the Supreme Court of the United States, in

pursuance to the separate appeal of The Union Stock Yard and Transit Company of Chicago heretofore taken in this cause, to the extent of including therein the following:

1. Application of The Union Stock Yard and Transit Company of Chicago to become a party to the proceedings.
2. Order of court allowing such application and making it a party.
3. Notice of intended application for appeal.
4. Acknowledgment of notice of intended application for appeal.

[fol. 132] 5. Order of court granting appeal.

6. Assignment of errors.
7. Bond for costs on appeal.
8. Notice of order allowing appeal.
9. Citation on appeal.
10. Statement supporting jurisdiction of Supreme Court of the United States on appeal.
11. Order of court directing avoidance of unnecessary duplication of record on appeal.
12. Acknowledgements of notices of order allowing appeal.
13. Clerk's certificate of transcript of record.

You will please show filing dates and docket entries but omit all captions except the application to become a party to the proceedings and the application for appeal.

Charles E. Cotterill, Solicitor for Petitioner. Mark W. Potter, Counsel.

Dated New York, N. Y., November 14, 1934.

[File endorsement omitted.]

[fol. 133] IN UNITED STATES DISTRICT COURT

[Title omitted.]

INTERVENTION OF UNION STOCK YARD AND TRANSIT CO. OF CHICAGO—Filed Nov. 1, 1934.

Comes now The Union Stock Yard and Transit Company of Chicago by its attorneys, Luther M. Walter, of Chicago,

and Charles E. Cotterill, of New York City, and says that it was a party defendant in the proceedings before the Interstate Commerce Commission out of which eventuated the order of such Commission that is involved in the above entitled proceedings; that the order of the Commission is directed to The Union Stock Yard and Transit Company of Chicago along with other named defendants before the Commission; that because of the foregoing it has an interest in these proceedings before this Honorable Court; and that in view of the foregoing, under the statutes of Congress, The Union Stock Yard and Transit Company of Chicago is entitled to be a party to these proceedings as of right and so desires. Therefore, such The Union Stock Yard and Transit Company of Chicago now becomes a party to these proceedings before this Honorable Court by this intervention and respectfully avers that such order of the Interstate Commerce Commission as so directed to it and if [fol. 134] so applied to it is and would be wholly null and void.

The Union Stock Yard and Transit Company of Chicago, by Luther M. Walter, Chas. E. Cotterill, 70 East 45th Street, its attorneys.

Dated, October 2, 1934.

The foregoing is approved and The Union Stock Yard and Transit Company of Chicago is made a party to the above entitled proceedings.

Jno. C. Knox.

Dated, October 2, 1934.

Service of the above is acknowledged this date of October 2, 1934.

Elmer B. Collins, Attorney for the United States. J. Stanley Payne, Attorney for the Interstate Commerce Commission. Hornblower, Miller, Miller & Boston, Attorneys for Hygrade Food Products Corporation. F. H. Towner, Attorney for Trunk Line Railroad, Petitioners.

[File endorsement omitted]

[fol. 135] IN UNITED STATES DISTRICT COURT

[Title omitted.]

ORDER GRANTING SEVERANCE

Upon consideration of the motion filed herein this day by The Union Stock Yard and Transit Company of Chicago for severance and an order allowing it to prosecute its appeal to the Supreme Court of the United States from the final decree entered on November 2, 1934, without joining with it The Atchison, Topeka & Santa Fe Railway Company and other original petitioners and the Court having considered said motion and been advised in the premises, and hearing that the said The Union Stock Yard and Transit Company of Chicago notified all other parties to the cause of the presentation of its petition for said appeal; that said appeal was prayed and an order granting it was entered by this Court on November 14, 1934, and that the said The Atchison, Topeka and Santa Fe Railway Company and other original petitioners have refused to join in said appeal, it is therefore.

Ordered that the said The Union Stock Yard and Transit Company of Chicago is hereby granted a severance and it may prosecute its said appeal to the Supreme Court of the [fol. 136] United States without joining The Atchison, Topeka and Santa Fe Railway Company and other original petitioners.

Martin T. Manton, United States Circuit Judge.
Jno. C. Knox, Henry W. Goddard, United States District Judges.

November 23, 1934.

[fol. 137] IN UNITED STATES DISTRICT COURT

[Title omitted.]

MOTION FOR ORDER OF SEVERANCE

Now comes The Union Stock Yard and Transit Company of Chicago, a party petitioner in the cause entitled in this court "The Atchison, Topeka and Santa Fe Railway Company, et al., v. The United States of America, et al.", being

the same Equity Docket No. 78–351, and shows to the Court that heretofore on November 14, 1934, it prayed and was granted an appeal to the Supreme Court of the United States from the final decree entered in said proceedings on November 2, 1934, notice of presentation of petition for said appeal having been theretofore served on all parties in such proceedings; that on November 20, 1934, it served upon The Atchison, Topeka and Santa Fe Railway Company and other original petitioners a notice requesting them to join in such appeal; that said parties have failed and refused to join in such appeal and that appellant here offers proof of the facts hereinabove stated.

Wherefore, this appellant moves the Court for an order herein granting to it a severance and the right to prosecute the said appeal without joining the said The Atchison, Topeka and Santa Fe Railway Company and other original petitioners therein.

The Union Stock Yard and Transit Company of Chicago, by Chas. E. Cotterill, its Solicitor. Mark W. Potter, Counsel.

[fol. 138] IN UNITED STATES DISTRICT COURT

[Title omitted.]

NOTICE OF MOTION FOR ORDER OF SEVERANCE—Filed Nov. 23, 1934

To: The Atchison, Topeka and Santa Fe Railway Company, et al., and Frank H. Towner and Cravath, De Gersdorff, Swaine & Wood, Their Solicitor and Counsel.

You are hereby notified that on November 14, 1934, in accordance with notice previously served upon you, The Union Stock Yard and Transit Company of Chicago presented its petition for appeal to the Supreme Court of the United States on the final decree entered on November 2, 1934, dismissing the bill of complaint herein; and that on November 14, 1934, an order was entered granting said appeal, a copy of said order having heretofore been served upon you.

You are hereby notified that said appellant will present to the Hon. Martin T. Manton, United States Circuit Judge,

and the Hon. John C. Knox and the Hon. Henry W. Goddard, United States District Judges, at 10:00 o'clock in the forenoon of November 23, 1934, or as soon thereafter as said matter may be heard, its motion for an order of sever-
[fol. 139] ance herein, a copy of said motion and order being served upon you herewith.

The Union Stock Yard and Transit Company of Chicago, by Chas. E. Cotterill, Its Solicitor. Mark W. Potter, Counsel.

Received a copy of the foregoing notice together with a copy of the motion and order therein referred to, this 20th day of November, 1934.

Frank H. Towner, Solicitor for The Atchison, Topeka & Santa Fe Railway Company, et al., by Cravath, de Gersdorff, Swaine & Wood, of Counsel.

[File endorsement omitted]

[fol. 140] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed Nov. 27, 1934.

To: Elmer B. Collins,
Counsel for United States,
Department of Justice,
Washington, D. C.

J. Stanley Payne,
Counsel for Interstate Commerce Commission,
Washington, D. C.

Hornblower, Miller, Miller & Boston,
Counsel for Hygrade Products Corporation,
15 Broad Street,
New York, N. Y.

Cravath, DeGersdorff, Swaine & Wood,
Counsel for Railroad Companies,
15 Broad Street,
New York, N. Y.

You and each of you are hereby notified that on the 14th day of November, 1934, at 4:00 P. M., or as soon thereafter as counsel can be heard, we shall present to the Honorable Martin T. Manton, United States Circuit Judge, and the

Honorable John C. Knox and the Honorable Henry W. Goddard, United States District Judges, the petition of the Union Stock Yard and Transit Company of Chicago for an appeal to the Supreme Court of the United States from [fol. 141] the final order and decree made and entered in the District Court on the 2nd day of November, 1934, in the cause entitled "The Atchison, Topeka and Santa Fe Railway Company, et al., v. The United States of America and Interstate Commerce Commission" in which The Union Stock Yard and Transit Company of Chicago was and is a party; and we shall ask that an order be entered allowing said appeal and making the same returnable within thirty (30) days, from November 14th, 1934, a copy of said petition for appeal, and assignment of errors therein referred to and a copy of said proposed order being attached hereto.

Chas. E. Cotterill, Solicitor for Petitioner. Mark W. Potter, Counsel.

[File endorsement omitted.]

[fol. 142] [Title omitted]

Acknowledgment of Notice of Intention to Appeal

This acknowledges a copy of the Notice of The Union Stock Yard and Transit Company of Chicago of its intention to appeal to the Supreme Court of the United States in the above matter; and also acknowledges a copy of the Assignment of Errors and of the Proposed Order of the District Court allowing appeal.

Elmer B. Collins, Special Asst. to the Atty. Gen'l, Solicitor for the United States of America.

[fol. 143] [Title omitted]

Acknowledgment of Notice of Intention to Appeal

This acknowledges a copy of the Notice of The Union Stock Yard and Transit Company of Chicago of its intention to appeal to the Supreme Court of the United States in the above matter; and also acknowledges a copy of the Assignment of Errors and of the Proposed Order of the District Court allowing appeal.

Hornblower, Miller, Miller & Boston, Solicitors for Hygrade Food Products Corporation.

[fol. 144] [Title omitted]

Acknowledgment of Notice of Intention to Appeal.

This acknowledges a copy of the Notice of The Union Stock Yard and Transit Company of Chicago of its intention to appeal to the Supreme Court of the United States in the above matter; and also acknowledges a copy of the Assignment of Errors and of the Proposed Order of the District Court allowing appeal.

Cravath, deGersdorff, Swaine & Wood, Counsel for Railroad Companies.

[fol. 145] [Title omitted]

Acknowledgment of Notice of Intention to Appeal

This acknowledges a copy of the Notice of The Union Stock Yard and Transit Company of Chicago of its intention to appeal to the Supreme Court of the United States in the above matter; and also acknowledges a copy of the Assignment of Errors and of the Proposed Order of the District Court allowing appeal.

J. Stanley Payne, Solicitor for Interstate Commerce Commission.

[fol. 146] In United States District Court for the Southern District of New York

Equity. No. 78-351

The Union Stock Yard and Transit Company of Chicago, Petitioner,

vs.

The United States of America, et al., Defendants

Order Allowing Appeal

Upon the entering of the final decree in the cause entitled "The Atchison, Topeka and Santa Fe Railway Company, et al., v. The United States of America and Interstate Commerce Commission," being the same Equity No. 78-351, came Charles E. Cotterill and Mark W. Potter, Solicitor

and Counsel respectively for The Union Stock Yard and Transit Company of Chicago, and filed in behalf of such party a petition for appeal and assignment of errors; and it is hereby

Ordered, that an appeal by The Union Stock Yard and Transit Company of Chicago in such cause to the Supreme Court of the United States from the final decree heretofore filed and entered on November 2, 1934, be and the same is hereby allowed, said appeal hereby made returnable thirty (30) days from the date hereof; that the bond on appeal be [fol. 147] and it is hereby fixed at the sum of Two Hundred Fifty Dollars ($250.00); and that there be transmitted to the Supreme Court of the United States a certified transcript of such parts of the record in the proceedings as are described in the præcipe and accompanying order of this court.

Martin T. Manton, United States Circuit Judge.
Jno. C. Knox, Henry W. Goddard, United States District Judges.

Dated November 14, 1934.

[fol. 148] In United States District Court

[Title omitted]

Assignment of Errors—Filed Nov. 27, 1934

Now comes the Union Stock Yard and Transit Company of Chicago, a party to the proceedings in this court entitled "The Atchison, Topeka and Santa Fe Railway Company, et al., v. The United States of America and Interstate Commerce Commission," being the same Equity Docket No. 78-351, and presents with its petition for appeal herein this assignment of errors and says that in the record and proceedings in such cause and the final decree made and entered against it therein on the 2nd day of November, 1934, there is error in the particulars hereinafter set forth.

The District Court of the United States for the Southern District of New York erred in making the decree and in dismissing the proceedings for injunction and nullification of the Commission's order in the following respects:

1. The court erred in holding that it was not necessary for either the court or the Commission to determine whether

[fol. 149] or not the Stock Yard Company is a "common carrier engaged in the transportation of property by railroad."

2. The court erred in not holding that the Stock Yard Company is not a "common carrier engaged in the transportation of property by railroad" and therefore not subject to the order of the Commission.

3. The court erred in not holding that the Commission erred in not holding that the Stock Yard Company is not a "common carrier engaged in the transportation of property by railroad" and therefore not subject to the order of the Commission.

4. The court erred in holding that the Stock Yard Company was properly subject to the Commission's order for the reason that the Stock Yard Company supplies to the railroad companies, under agreements with them, certain physical livestock terminal facilities and certain physical services coming within the definition of "transportation" contained in Paragraph 3 of Section 1 of the Interstate Commerce Act.

5. The court erred in holding that Stock Yard Company properly subject to the Commission's order although holding at the same time that it is incumbent upon the railroad companies to pay the Yard Company its proper "yardage" charges on livestock delivered at unloading pens.

6. The court erred in holding that should there be disagreement between the railroad companies and the Yard Company as to the amount of "yardage" charges to which the Yard Company may deem itself entitled on livestock delivered at unloading pens the remedy would be under Paragraph 6 of Section 15 of the Interstate Commerce Act for the fixation of "divisions" of joint through rates.

[fol. 150] 7. The court erred in holding that the consignee's use of the Yard Company runways and other physical facilities leading into the Hygrade Food Products Corporation plant outside the Yard are facilities of "transportation by railroad" within the Interstate Commerce Act.

8. The court erred in holding the Yard Company properly subject to the Commission's order because of the failure of the railroads to arrange with the Yard Company that

the Hygrade Company might without extra charge use the Yard Company properties and facilities in removing livestock into its plant from the unloading pens.

9. The court erred in not holding the order of the Commission unsupported by evidence wherein such order declares that there are no "services" performed beyond the unloading pens for which extra compensation is payable under the law by the Hygrade Company.

10. The court erred in holding that the decision of the Commission was one in which the Commission had made a finding of "unreasonableness" of a "practice" under Sections 1 and 15 of the Interstate Commerce Act.

11. The court erred in holding that the Commission's findings of "unreasonableness" of a "practice" were supported by evidence.

12. The court erred in holding that the jurisdiction of the Commission under Paragraph 3 of Section 1 and of Paragraph 5 of Section 15 of the Interstate Commerce Act extends beyond suitable unloading pens in The Union Stock Yard and Transit Company of Chicago in the case of shipments of ordinary livestock in carloads consigned to the Hygrade Company at such public stockyards.

[fol. 151] 13. The court erred in failing to hold that under Paragraph 5 of Section 15 of the Interstate Commerce Act the transportation obligation of the railroads in respect to ordinary livestock in carloads consigned to shippers at The Union Stock Yard and Transit Company of Chicago ends when such livestock is deposited into suitable pens at such public stock yards.

14. The court erred in not holding that the Packers and Stockyards Act of Congress in *in pari materia* with Paragraph 5 of Section 15 of the Interstate Commerce Act and that the two together vest in the United States Secretary of Agriculture jurisdiction with respect to facilities, services and charges beyond unloading pens in The Union Stock Yard and Transit Company of Chicago.

15. The court erred in holding that the ordinary duties of railroads in respect of delivery of livestock in public stockyards into suitable unloading pens are enlarged and extended in instances of shipments transported to The

Union Stock Yard and Transit Company of Chicago because the railroads have constituted such place their own livestock terminal and hence that the railroad duty thereat is the same as would be the railroad duty at individual livestock delivery facilities on their own rails in Chicago.

16. The court erred in finding or assuming that the record made in the proceedings before the Commission was sufficient to support the order made by the Commission therein on July 2, 1934.

17. The court erred in not holding the order of the Commission invalid as a matter of law and as beyond the authority and jurisdictoin of the Commission.

18. The court erred in finding that the proceedings for injunction and nullification of the Commission's order [fol. 152] should be dismissed and in failing to issue injunction as sought.

Wherefore, petitioner prays that said decree entered herein on the 2nd day of November, 1934, be reversed and that said District Court of the United States for the Southern District of New York be directed to enter a decree declaring such order of the Commission void and perpetually setting it aside, and suspending and annulling it, and enjoining its enforcement, and that petitioner be granted such other and further relief as may be appropriate.

Chas. E. Cotterill, Solicitor for The Union Stock Yard and Transit Company of Chicago. Mark W. Potter, Counsel.

Dated November 12, 1934.

[File endorsement omitted.]

[fol. 153] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—filed Nov. 27, 1934

To the Honorable Martin T. Manton, United States Circuit Judge; the Honorable John C. Knox; the Honorable Henry W. Goddard, United States District Judges.

Now comes the Union Stock Yard and Transit Company of Chicago, by its Solicitor and Counsel, and says that it

was and is a party to the proceedings in and before this court entitled "The Atchison, Topeka and Santa Fe Railway Company, et al., vs. The United States of America and Interstate Commerce Commission," being the same Equity Docket No. 78-351; that it feels aggrieved by the final order and decree of the District Court made and entered in such cause on the 2nd day of November, 1934, in respects which are in part distinctive, separate and peculiar to this petitioner for appeal; and the said The Union Stock Yard and Transit Company of Chicago does hereby appeal to the Supreme Court of the United States from such final decree [fol. 154] of this court, and prays that its appeal be allowed and that citation be issued as provided by law.

The particulars wherein it considers such final decree erroneous are set forth in the Assignment of Errors on file to which reference is made.

It is further respectfully prayed that so far as may be necessary a transcript of the record, proceedings and papers on which such final decree was made and entered, and of the papers on appeal, all duly authenticated, may be transmitted to the Supreme Court of the United States and that a proper order relating to the security that may be required of it be made.

Chas E. Cotterill, Solicitor for The Union Stock Yard and Transit Company of Chicago. Mark W. Potter, Counsel.

Dated at New York, N. Y., November 14, 1934.

[File endorsement omitted.]

[fol. 155] Undertaking in the sum of $250 for costs on appeal. Filed and approved on Nov. 28, 1934.

[fols. 156-159] Citation in usual form showing service on J. Stanley Payne et al. omitted in printing.

[fol. 160] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OF THE COURT RESPECTING TRANSCRIPT OF RECORD FOR THE PURPOSE OF APPEAL OF THE STOCK YARD COMPANY—Filed Nov. 27, 1934

This court having, on November 14, 1934, allowed to The Union Stock Yard and Transit Company of Chicago a separate appeal from the final decree of this court, dated November 2, 1934, in the cause then entitled "The Atchison, Topeka and Santa Fe Railway Company, et al., v. The United States of America, et al.", being Equity Docket 78-351, and there having been allowed by this court to The Atchison, Topeka and Santa Fe Railway Company and other railway company petitioners their separate appeal to the Supreme Court of the United States in which the record of proceedings before this court has been directed to be made up by the Clerk for transmittal to the Supreme Court of the United States, and it appearing to the court that such transcript of record so taken up on the appeal of the railway companies will present to the Supreme Court all needed parts of the record of proceedings before this court other than the appeal papers of the Stock Yard Company for [fol. 161] the purpose of considering both appeals and that it would be unduly burdensome upon the courts and the parties, and unduly expensive, for any part of such record of the proceedings in this court to be duplicated in the separate appeals so being taken except to the extent necessary, and by virtue of special authority conferred upon this court by the District Court Jurisdiction Act in respect to the promotion of justice and economy by particular procedural orders as to this court may appear meet and proper,

It is ordered, that the Clerk of this court, in making up the transcript of record for appeal of the Stock Yard Company need not and will not, in connection with such separate appeal, duplicate any papers or documents transmitted by the Clerk in connection with the appeal of the railroad companies except to the extent the præcipe of the Stock Yard Company so requires.

Martin T. Manton, United States Circuit Judge.
Jno. C. Knox, Henry W. Goddard, United States District Judges.

Dated November 14, 1934.

[File endorsement omitted.]

[fols. 162-164] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 165] In United States District Court, Southern District of New York

[Title omitted]

Order to Transmit Original Narrative Statement of Evidence

This cause came on to be heard, upon application of the petitioners, and it was

Ordered that the Clerk of this Court in transmitting the transcript of the record on the appeal of the petitioners herein be, and he hereby is, directed to include in said record instead of a transcript thereof the original narrative statement of the oral testimony taken before the Interstate Commerce Commission, duly approved and filed herein, and in certifying said record he shall indicate that said narrative is the original filed copy.

Dec. 22, 1934.

Manton, U. S. D. J.

[fol. 166] In United States District Court, Southern District of New York

[Title omitted]

Affidavit of Charles N. Fiddler—Filed Dec. 22, 1934

State of New York,
County of New York, ss:

Charles N. Fiddler, being duly sworn, deposes and says:

I am an attorney at law and managing clerk associated with Cravath, de Gersdorff, Swaine & Wood, counsel for the petitioners herein.

I am about to present to the clerk of this Court, for certification a transcript of the record on the appeal of the petitioners herein. By an order dated December 18, 1934, the narrative statement of the oral testimony taken before

the Interstate Commerce Commission was approved and said narrative statement has been duly filed with this court. Said filed copy of the narrative statement was the only copy made.

Wherefore, I respectfully pray that the annexed order be signed, pursuant to the United States Judicial Code, [fol. 167] Section 210 (28 U. S. C. A., sec. 47a), directing the clerk of this Court in preparing and transmitting the transcript of the record on the appeal of the petitioners herein, to include in said record instead of a transcript thereof, the original filed copy of said narrative statement and in certifying said record to indicate that said narrative is the original filed copy.

Charles N. Fiddler.

Sworn to before me this 22d day of December, 1934.

[File endorsement omitted.]

[fol. 168] Clerk's Certificate to foregoing papers omitted in printing.

[fol. 169] In United States District Court for the Southern District of New York

Equity. No. 78-351

The Atchison, Topeka and Santa Fe Railway Company, et al., Petitioners,

vs.

The United States of America, et al., Defendants

Narrative Statement of Evidence—Filed Dec. 18, 1934

Be it remembered that on the 2nd day of October, A. D., 1934, before the Hon. Martin T. Manton, Circuit Judge, and the Hon. John C. Knox and the Hon. Henry W. Goddard, District Judges, this cause came on for final hearing upon the pleadings heretofore filed herein.

APPEARANCES

Frank H. Towner for petitioners.

Martin Conboy and Elmer B. Collins for United States of America.

Daniel W. Knowlton and J. Stanley Payne for Interstate Commerce Commission.

Nathan L. Miller, Harold J. Gallagher and Edward B. Boyne for Hygrade Food Products Corporation.

Charles E. Cotterill and Luther M. Walter for The Union Stock Yards and Transit Company of Chicago.

Whereupon a petition for intervention was presented on behalf of The Union Stock Yard and Transit Company of [fol. 170] Chicago, which petition was received and filed. Whereupon a petition for intervention on behalf of Hygrade Food Products Corporation was presented, which petition was received and filed.

Whereupon petitioners offered in evidence the entire record, including all testimony, exhibits and other evidence introduced on the hearing before the Interstate Commerce Commission in its Docket 24375, Hygrade Food Products Corporation vs. Atchison, Topeka & Santa Fe Railway Company, et al., the same being received in evidence and marked by the reporter as Petitioners' Exhibit 1. (The transcript of testimony taken before the Interstate Commerce Commission and included as part of Petitioners' Exhibit 1 has been reduced to narrative form and is incorporated in this statement of evidence under the heading "Narrative Statement of Evidence Before the Interstate Commerce Commission," which immediately follows. The exhibits introduced in the hearings before the Interstate Commerce Commission and numbered from 1 to 23, both inclusive, together with certain other exhibits supplied to the Interstate Commerce Commission after the close of the hearing before it, have been certified and transmitted separately as original exhibits to the Clerk of the Supreme Court.)

[fol. 171] **Narrative Statement of Evidence Before the Interstate Commerce Commission**

Before the Interstate Commerce Commission

Docket No. 24375

HYGRADE FOOD PRODUCTS CORPORATION

vs.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, ET AL.

Before J. Edgar Smith

Chicago, Illinois, December 21, 1931.

APPEARANCES

Cyril J. Curran appearing for complainant, Hygrade Food Products Corporation.

Ralph M. Shaw and Frank H. Towner, appearing for Union Stock Yard and Transit Company.

R. D. Rynder and W. N. Strack, appearing for Omaha Packing Company.

R. D. Lynch appearing for the Atchison, Topeka & Santa Fe Railway Company.

P. F. Gault and S. H. Gillette appearing for the Chicago & North Western Railway Company.

E. Rigg appearing for the Chicago, Rock Island & Pacific Railway Company.

R. G. Raasch appearing for Illinois Central Railroad Company.

William W. Adams appearing for Hygrade Food Products Corporation.

D. P. Connell appearing for New York Central Lines.

E. W. Soergel, J. L. Brown and J. N. Davis appearing for the Chicago, Milwaukee, St. Paul & Pacific Railroad Company.

Frank H. Towner appearing for the Chicago & Alton Railroad and Chicago Great Western Railroad Company.

Hornblower, Miller, Miller & Boston appearing for complainant.

[fol. 172] Proceedings

Examiner Smith: The Interstate Commerce Commission has set for hearing at this time and place the complaint of the Hygrade Food Products Corporation versus The Atchison, Topeka & Santa Fe Railway Company, et al. (Tr. 5.) In this case it is alleged that the rates charged for the transportation of cattle, calves, hogs and sheep, in carloads from various points in the states of Nebraska, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, New Mexico, New York, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas and Wisconsin to Union Stock Yards, Illinois, were and are unreasonable, unduly prejudicial to complainant, and unlawful (Tr. 6), in violation of Sections 1, 3, 6 and 15 of the Interstate Commerce Act. The Commission is asked to prescribe reasonable rates for the future and to award reparation.

Mr. Curran: There is also an allegation in the amended complaint of a Section 2 violation. The carriers contend that the applicable rate for the delivery of live stock in carloads to the Hygrade Food Products Corporation is the Chicago rate plus the Chicago switching charge of 2 cents per 100 pounds with a minimum of 60,000 pounds. Deliveries similar to those made to the Hygrade plant are also [fol. 173] made to the plant of the Omaha Packing Company on the Chicago rate plus $2.70 or $1.35 a car. Consequently, if the carriers are right, we are subjected to the payment of a charge in excess of that paid by the Omaha Packing Company to the extent the $12 exceeds the charge of $2.70 or $1.35. (Tr. 7.) Also, we are required to take delivery, if we do not pay this $12 charge, at the yards of the Union Stock Yard & Transit Company. We are subjected to a payment for so-called yardage at the plant of the Union Stock Yards which runs generally from $6 to $22 a car, as applied to the shipper of particular cars and particular kinds of live stock. That charge is not imposed upon the Omaha Packing Company because deliveries are made to the side track of that company. We allege a Section 2 violation with respect to that.

William W. Adams was thereupon called as a witness for complainant, and being duly sworn testified as follows:

I am Traffic Manager of the Hygrade Food Products Corporation, and have held that position about nine months.

(Tr. 8.) Before that I was Assistant Traffic Manager for the same company, and before that Assistant Traffic Manager for the Allied Packers, Incorporated, a firm which the Hygrade Company bought out in August, 1929. I have been in the employ of the Hygrade Company or its predecessor since July, 1920, and before then I was on the rate [fol. 174] desk at Sulzberger & Sons and Wilson & Company for three years. (Tr. 9.) I was also Assistant Traffic Manager of Reed Murdock Company for seven years, and for two years was in the local freight office of the Burlington Railroad at Rock Island, Illinois.

I am familiar with the general layout of the Union Stock Yards and the rails of the Chicago Junction Railway which serve it, and am also generally familiar with the operations of the Stock Yards in the reception, care and delivery of live stock.

The business of the Hygrade Company is the purchase of animals and slaughter in preparation for food purposes. We have one plant located at Detroit, one at Buffalo, one at Wheeling, and one at Chicago which is the one involved in this case. The Chicago plant is at 3830 South Morgan Street. (Tr. 10.)

The document handed me is a map of the Chicago Junction Railway, which shows the Hygrade plant marked 1 near the center of the map, and the Omaha Packing Company marked 2 in the upper center of the map.

(Said document was thereupon received in evidence as Complainant's Exhibit 1 and is certified to this court.)

The Hygrade plant, as shown on the map, is directly north of the stockyards, which are shown thereon at the corner of Halsted and 47th Streets, running north to Pershing Road. Between the plant and the stockyards is the [fol. 175] proposed extension of Pershing Road or 39th Street.

To explain generally the system of track which is shown in that part of the map (Exhibit 1), which is designated Union Stock Yards: The three heavy lines marked "Chicago Junction Railway" immediately south of the Hygrade plant (Tr. 11) are the tracks on which live stock is unloaded when received at the yards. The unloading chutes are adjacent to these tracks, and the holding pens are between that or south of the most southerly.

As to the connection between that system of tracks and the Hygrade plant, tracks run north from the most northerly of the three tracks on Racine Avenue to 38th Street, where they run east across Morgan Street. The two spurs shown just west of Morgan Street are those of the Hygrade Company extending southerly from the 38th Street track. That does not show all of the spurs leading to the Hygrade plant. There are branches from those two spurs and also two new spurs which will be shown on another exhibit. (Tr. 12.)

The Omaha Packing Company, shown on Exhibit 1, is on the Chicago, Burlington & Quincy Railroad, the tracks of which are shown coming in from Western Avenue to the Omaha Packing Company at 22nd and Halsted Street, south to the place I have marked 2 on the map.

The document shown me is a map of the property of the Hygrade Company showing in detail the tracks shown on Exhibit 1, and also the additional tracks referred to.

(Said document was thereupon received in evidence as Complainant's Exhibit 2 and is certified to this court.) (Tr. 13.)

[fol. 176] On the extreme left of Exhibit 2 are the tracks which do not appear upon Exhibit 1. They are used at the present time for storage purposes only. We propose to use them to unload live stock if we can get delivery at our plant. They are shown as 452 feet long with a crossing where our ice track lead comes in, which would have to be kept clear. Ten or twelve cars could be accommodated on each track, but we contemplate unloading only from the more easterly one. (Tr. 14.) The track shown on the right leading on from the upper left-hand corner of Exhibit 2 is our icing track where cars are placed for icing prior to loading. It is the next track to the right of the one which I have just described and runs down to a point marked Hair House Frame. The track just south of the two-story brick power house is our coal track where coal is unloaded. At the more northerly part we load tankage and fertilizer which is a product of our plant. The track which comes south but curves east is the provision track where edible products are loaded and unloaded at our shipping dock. (Tr. 15.) The shipping dock is marked "loading platform." The last three tracks I have mentioned are marked on Exhibit 2 as "switch tracks." The proposed Pershing

Road is immediately south of the plant and the stockyards is on the other side of Pershing Road. In the lower right-[fol. 177] hand corner of Exhibit 2 are the pens which we have for storage of live stock. They are marked "cattle and hog pens." We intend to construct permanent unloading platforms and pens adjacent to our contemplated unloading track which is the track marked "452 feet." (Tr. 16.)

The Hygrade Compay took possession of this property on August 24, 1929. Prior to then it was in the possession of the Allied Packing Company. The complaint in this case relates only to shipments of the Hygrade Company.

The document handed me is a detail map of the pens shown as cattle and hog pens on Exhibit 2.

(Said document was thereupon received in evidence as Complainant's Exhibit 3 and is certified to this court.) (Tr. 17.)

These pens are shown on Exhibit 2 in the lower right-hand corner, just north of Pershing Road. We have ample capacity for the storage of live stock at our plant on our own grounds. The capacity of the pens is 1,725 hogs, 690 cattle or 2,592 sheep. We can handle that number of either but not all together. (Tr. 18.) There are 22 pens. All of them will accommodate in every instance a deck of live stock and some of them two decks. Quite frequently hogs and sheep are loaded in double deck cars. (Tr. 19.)

Referring back to Exhibit No. 2, I will show how these pens could be reached from the unloading tracks for live stock which I have designated on the left of the Exhibit—the tracks marked "452 feet": Live stock would have been unloaded on this track and driven south of the Hair House, [fol. 178] south of the two buildings marked "Concrete Building" and "Frame Building," and south of the power house. There is a passageway through there which it was our intention to fence into a driveway connecting with the western gate of the runway between our present pens. It is not now fenced.

The pens in the plant can hold from 11 to 22 cars of live stock, depending on whether they are single or double deck. Cattle do not come in double deck cars.

We receive deliveries of dead freight at our plant. Carloads of salt are sometimes unloaded on our ice track and

sometimes on what is known as the provision lead (Tr. 20). Cars of products would be unloaded on the provision track adjacent to the loading platform.

As to outgoing shipments of dead freight, edible product is loaded on the switch track adjacent to the loading platform. Tankage and fertilizer are loaded on the northern end of the coal track adjacent to the fertilizer department building. Those tracks are adequate for all incoming and outgoing shipments of dead freight. We have never used tracks marked "452" for loading or unloading and they are now being used only as storage tracks. (Tr. 21.)

I am generally familiar with the plant operations at the Hygrade Food Products Corporation plant so that I can testify as to its capacity per killing, its present output, and the quantity of live stock received by the Hygrade Food Products Corporation, whether through consigned shipments or through purchases at the yards of the Union Stock Yards Company.

The document handed me is a statement showing the number of head of live stock received in direct shipments at the Chicago plant of the Hygrade Company from September 1, [fol. 179] 1929, to *to* August 31, 1931. By direct shipments I mean shipments which were consigned from points outside Chicago to the Hygrade Company and do not mean stock purchased at the yards of the Stock Yards Company. We have also purchased considerable quantities of live stock in the stockyards. These direct shipments were delivered to us in the Union Stock Yards.

(Said document was thereupon received in evidence as Complainant's Exhibit 4 and is certified to this court.) (Tr. 22.)

The first three columns of Exhibit 4 show the number of hogs received, the total per month, the highest number per day and the average per day. The next three columns show the same for cattle, and the last three columns the same for sheep. The capacity of the pens shown in Exhibit 3 is greater than the highest daily receipts shown in Exhibit 4 and is much in excess of the average receipts shown. Exhibit 4, however, only covers direct shipments. The killing capacity per day of the Hygrade plant is 2,000 hogs, 400 cattle, 350 sheep and 150 calves. All of these numbers could be killed on the same day. (Tr. 23) Our killing capacity

is greater than the highest number of direct shipments on any day as shown by Exhibit 4.

The document handed me is a statement of the number of carloads of live stock received at Chicago consigned di-
[fol. 180] rectly to the Hygrade Company between September 1, 1929, and August 31, 1931. They are shown by railroads.

(Said document was thereupon received in evidence as Complainant's Exhibit 5 and is certified to this court.)

Exhibit 5 covers the same shipments covered by Exhibit 4. (Tr. 24.) The Hygrade Company received shipments subject to this complaint for seven days in August, 1929, but in preparing these exhibits I took even months to make an even two years. There have been shipments which are also subject to this complaint since August 31, 1931. The shipments shown in Exhibit 5 were delivered in the pens of the Union Stock Yard and Transit Company. There were no deliveries of live stock at any time during the period covered by the complaint to the side track of the Hygrade Company.

As to livestock which we purchase on the yards of the Union Stock Yards Company, we receive unlimited free storage. We can leave such stock in the pens of the Stock Yards until such time as we are ready to kill it. (Tr. 25.) On such livestock our own storage is not required. Consequently these exhibits reflect the situation as it would be if we had received deliveries of livestock consigned to us at our own side track. About 5 per cent of the direct shipments received at the stockyards are driven directly to the killing floor and are not stored on our premises. The 5 per cent I have given includes purchases at the stockyards. I cannot tell what percentage it would be of straight shipments. (Tr. 26.)

[fol. 181] The document handed me is a statement of the cars of products and supplies delivered on the tracks of the Hygrade Company at Chicago on which the Chicago Junction Railway switching charge is absorbed by the railroads.

(Said document was thereupon received in evidence as Complainant's Exhibit 6 and is certified to this Court.)

No terminal charge was imposed upon any of the carload lots received as shown on Exhibit 6—no freight charges

were paid other than the straight Chicago rate. Some of these shipments were fresh meat. (Tr. 27). Probably one or two cars a month over the two years were fresh meat. We paid no switching charges on any of the cars covered by Exhibit No. 6. The exhibit covers only cars brought in from outside the Chicago District moving on line haul rates. (Tr. 28). In addition, we receive cars originating in the Chicago Switching District on which there is one switch charge, but Exhibit 6 does not include those cars. Exhibit 6 covers the period September 1, 1929 to August 31, 1931, for the same reasons as the previous exhibits.

The document handed me is a statement of the cars of product shipped from the Hygrade plant at Chicago during the same two years on which the Chicago Junction Railway switching charge was absorbed by the line haul carriers. The exhibit does not include any cars in local switch-
[fol. 182] ing movement on which we would pay a switching charge. Switching charges were paid on the cars shown in the document but were absorbed by the line haul carriers. (Tr. 29) They were not paid by the Hygrade Company.

(Said document was thereupon received in evidence as Complainant's Exhibit 7 and is certified to this Court.)

The shipments on Exhibit 7 consisted of all classes of meat products, such as lard, casings and some hides.

I am distributing Exhibit 8.

(Said document was thereupon received in evidence as Complainant's Exhibit 8 and is certified to this Court.) (Tr. 30.)

Exhibit 8 shows typical cars of products or supplies received by the Hygrade Company at Chicago, showing date shipped, origin, car number and initial, the carrier delivering the shipment to the Chicago Junction, commodity, weight, rate, charges and the Chicago Junction switching charges. The shipments shown are representative movements to the Hygrade Company plant and show what would be shown by the same statistics on all cars covered by Exhibit 7. In the extreme right-hand column the highest figure shown is $15.80. (Tr. 31). That is the Chicago Junction Railway switching charge which is absorbed by the line haul carriers. The variation in amount results from varia-
[fol. 183] tion in weight. The switching charge is subject to

a 60,000 pound minimum. Those switching charges were not paid by the Hygrade Company. The last two items of Exhibit 8 are shipments of fresh meat which are representative of such movements. Fresh meat is shipped into our plant for handling in the same manner as the products of animals slaughtered there. (Tr. 32). The only difference is that in the latter case we have the slaughtering in addition to the other processes. After the slaughtering is completed, the fresh meat purchased and that slaughtered is co-mingled and is sent out and sold on the same terms and basis.

Exhibit 9 is now being distributed.

(Said document was thereupon received in evidence as Complainant's Exhibit 9 and is certified to this court.)

Exhibit 9 shows eight typical cars of product shipped from our plant to points outside the Chicago Switching District, showing dates shipped, destination, car number and initial, initial carrier, commodity, weight, rate, freight charges and the Chicago Junction switching charge which is absorbed by the line haul carriers. (Tr. 33). The shipments shown are typical of all outbound shipments. The last column shows the Chicago Junction Railway switching charges which in this exhibit was $12 a car in all cases and was absorbed by the line haul carriers. The charges paid by us are shown in the next to the last column headed [fol. 184] "Charges".

Exhibit 10 is now being distributed.

(Said document was thereupon received in evidence as Complainant's Exhibit 10 and is certified to this court.)

Exhibit 10 shows eight typical cars of live stock billed direct to the Hygrade Company at Chicago on which delivery was made in the Union Stock Yards. The exhibit shows the date shipped, origin, car number and initial, delivering carrier, commodity, weight, rate, freight charges and trackage charges of the Chicago Junction which is absorbed by the carriers. (Tr. 34). All of these shipments were delivered at the yards. The points of origin shown in the second column from the left are typical points from which we receive live stock. The exhibit reflects what would be shown if we showed the facts as to all consigned shipments of live stock. All of the charges shown in the last

column were paid by the line haul carriers. The next to the last column shows the charges we paid. (Tr. 35). In the case of the first item the amount of $90.36, shown in the next to the last column, is the freight charges from Omaha to Chicago, based on 25,100 pounds at a rate of 36 cents. The $2.70 item is the terminal charge at Chicago as provided in Galligan's I. C. C. No. 182. The 69 cents is the unabsorbed switching of the South Omaha Terminal Railway. The item of $93.75 is what we actually paid on that shipment. The $2 item is trackage charge of the Chicago Junction which it receives for allowing the road [fol. 185] haul carrier to move the cars over its tracks.

To explain the method by which shipments of live stock are delivered to the Union Stock Yard & Transit Company: They are brought by the road haul carriers and placed at the unloading chutes of the Union Stock Yard & Transit Company (Tr. 36) on the rails of the Chicago Junction Railway. They are then unloaded by employees of the Stock Yards Company and driven from the unloading chutes to the holding pens.

The $2 trackage charge was imposed with respect to all shipments shown on Exhibit 10, and was less than the $2.70 per car we paid except on the last car where there was a $4 trackage charge. Stock received from eastern lines is subject to a terminal charge of $1.35 and that received from western carriers, to a charge of $2.70. On this exhibit all the carriers were western carriers.

In shipping a carload of live stock the shipper receives from the initial carrier a live stock contract on which is a receipt for the product shipped, showing the consignee, route, description of product, and in some instances the rate (Tr. 37) and any additional charges that may have accrued. When the stock arrives at destination the charges are collected by the Union Stock Yard & Transit Company for the account of the carriers on a freight bill issued by the Stock Yards Company, which carries its yardage charges in addition to the freight charges. The live stock contract is the equivalent of the bill of lading but applies only on live freight.

The document handed me is a copy of a freight bill of [fol. 186] the Union Stock Yard & Transit Company on a car delivered to us on October 6, 1931. We receive such bills on all our shipments of live stock delivered at the yards.

Under the heading "Freight Charge Analysis" in the lower left-hand corner of the bill is shown the car number, rate, weight, freight charges, terminal charge, and in this case the 69-cent switching charge representing the unabsorbed portion of the South Omaha Terminal Railway switching charge of $1.82. (R. 38.)

(Said document was thereupon received in evidence as Complainant's Exhibit 11 and is certified to this court.)

On this exhibit the charge of $85.68, in the block at the lower left-hand corner, is imposed under C. B. & Q. tariff I. C. C. No. 17477. The $2.70 item is charged under Galligan's tariff I. C. C. 182. I haven't the tariff reference for the South Omaha Terminal Railway charge of $1.82 but the absorption of $1.13 is under C. B. & Q. tariff I. C. C. 15625. That is the total of $89.07 shown in the upper right-hand corner in the second column from the right. (Tr. 39). The item of 7 cents which appears below the $89.07 item in the second column is not filed with the Commission but covers fire insurance on the hogs while in the yards of the Stock Yards Company.

As to the item of $6.24 which appears immediately below, there is no tariff on file with the Interstate Commerce Commission covering the yardage charge of 12c a head. This yardage is a charge imposed by the Union Stock Yard & Transit Company to cover the delivery of the stock to us after it has been unloaded from the cars. As to what service is performed for that charge, in some instances the hogs are driven by employees of the Stock Yard Company from [fol. 187] the unloading chutes to the holding pens, where they have access to water. At that point they are held under lock and key until delivery is made to our employees, who drive them from those pens. In other instances, our own employees accept delivery at the unloading chutes, drive the animals direct to the scales and from the scales to our plant. (Tr. 40). The latter procedure is followed in about 15 percent of the direct shipments. Eighty-five percent of the direct shipments are put in holding pens where we accept delivery later, and in 15 percent of the cases the Hygrade Company take delivery at the unloading chute. The charge is the same in both cases. When animals are placed in holding pens by stockyards employees, I do not think there is any other service rendered than that I

mentioned. If such animals are fed or bedded we pay an additional charge for that. It is not covered by the yardage charge. (Tr. 41). After the delivery of the stock to us either at the chutes or in the holding pens, our men drive the stock to the scales where they are weighed by the weighmaster of the Stock Yards Company. Our men then drive the animals from the scales to our plant. No other service is performed by Stock Yards employees after weighing. We receive a scale ticket showing the weight. We furnish a copy of it to the Railroad Company for the purpose of assessing freight charges. The railroad companies do not receive this information directly from the Stock Yards Company, we give it to them. Freight charges are assessed on the basis of the weight found. (Tr. 42).

[fol. 188] The yardage charges vary with the number of head and kind of animals. On cattle it is 35 cents per head, calves 25 cents per head, hogs 12 cents per head and sheep 8 cents per head. These charges have been the same during the period covered by the complaint. On ordinary shipments the charge per carload would vary from $6 or even often less than $6. In some instances it is as high as $22 or $23 a car. The higher charge would apply on double deck cars of sheep. A single-deck car of hogs may come in with as few as 24 or 25 hogs, which would make roughly $3 yardage charge, but in a double-deck car as many as 110, which would make a yardage charge of $13.20 per car. The cattle average close to 28 or 29 a car, which would make an average yardage charge of about $10 per car. Sheep in double-deck cars run 250 or over, which at 8 cents per head would make the charge $20 or over per car. (Tr. 43).

No service is performed by the Stock Yards employees after weighing. After the weighing the stock are driven directly to our plant for slaughter. Prior to weighing and after the live stock are placed in the so-called holding pens, we are allowed unlimited storage. As to whether we ever have occasion to make use of that privilege: On animals arriving Saturday morning or Sunday, they would ordinarily be held over until Monday, but in most cases we take immediate delivery to save expenses of holding them there and feeding them. We pay extra for feeding.

As to whether the charges imposed for feeding by the Stock Yards people are in reasonable consistency with the

prevailing market prices for the different kinds of feed: The Stock Yards Company charge at present for corn is $1.20 a bushel, for hay $35 per ton and for straw $27 a [fol. 189] ton. (Tr. 44). Yesterday the cash price for corn at Chicago varied from 36 to 41½ cents per bushel as against $1.20. Hay varies from $9 to $18 a ton as against $35 a ton collected by the Yards Company. The market prices I have given are on a carload basis.

Exam. Smith: Before we get too deep into this, has the Commission any jurisdiction over those prices?

Mr. Towner: The Stock Yards Company has filed an answer in this case denying the jurisdiction of the Commission and setting up that the yardage service for which yardage charges and feed prices are collected (Tr. 45) are contained in tariffs filed with the Secretary of Agriculture who is now investigating them. I doubt the jurisdiction of the Interstate Commerce Commission to concurrently investigate them.

The Witness: Feed at the stockyards is supplied by stockyards employees to keep the cattle going while we leave them in the yards.

Examiner Smith: I do not think I would go any further than that.

Mr. Curran: We are not making any complaint of these charges. We merely offer them for the purpose of showing we have a strong incentive to remove live stock as quickly as possible from the yards. (Tr. 46).

The Witness: Generally we get our live stock out of the yards into our plant within six hours of arrival. The rates and charges covered by the freight bills presented by the Stock Yards Company are paid by check sent to the office of [fol. 190] the Union Stock Yard & Transit Company. A number of bills are usually paid at the same time. This bill is typical of all bills which we receive covering all the different shipments which are the subject of this complaint. Galligan's Tariff I. C. C. 182 covers the terminal charge and the basis for delivery at the platforms of the Union Stock Yard & Transit Company. (Tr. 47). It does not cover the whole period of the complaint but was preceded by Galligan's tariff I. C. C. 122. Page 76 of tariff 182 and I think page 86 of tariff 122 contains the provisions with respect to terminal charges. (Tr. 48).

Examiner Smith: The defendants do not desire copies of these?

Mr. Towner: What are they?

Examiner Smith: Merely sheets of the tariff.

Mr. Towner: If they are in the record I would like to have copies.

Mr. Curran: We want the whole tariff in for reference.

Mr. Towner: I have no objection to that. (Tr. 49).

The Witness: There is no substantial difference between the two tariffs, I. C. C. 182 and I. C. C. 122, one of which is 20-S and other is 20-R. Page 76 of tariff 182 is headed "Basis for rates to and from facilities located on the Chicago Junction Railway." It is shown as rate basis 6 [fol. 191] in the left hand column, and shows the basis for freight charges which will apply to or from line haul carriers from or to facilities on the Chicago Junction Railway. The first two columns cover freight traffic other than live stock and the last three columns cover live stock. The heading over the last three columns is shown as "Live stock from or to (as noted) industries; chutes or sidings of the Union Stock Yard & Transit Company at Union Stock Yards." (Tr. 50). The Union Stock Yards is a sub-station of Chicago. It has nothing to do with the Union Stock Yard & Transit Company except that the Union Stock Yards & Transit Company is located at Union Stock Yards.

Dead freight in carload and trap cars comes under rate basis 1, shown on page 73 as the Chicago rates subject to a minimum of $19 per car or a minimum of 3 cents per hundred pounds with a minimum carload charge of $19. There is no terminal charge applying to shipments of dead freight. Live stock is shown as rate basis 5, plus a terminal charge of $2.70 or $1.35 a car, depending on whether an eastern or western road is delivering carrier. Rate basis 5 is shown on page 75 as the Chicago rate, so this would be the Chicago rate plus the terminal charge. (Tr. 51).

[fol. 192] I do not know the reason for the difference in the terminal charges of $2.70 and $1.35. The $1.35 rate applies on eastern lines and the $2.70 on the western lines. The $2 trackage charge shown on one of my exhibits is not in the tariff—it is in the nature of a division and is paid by the delivering carrier to the Chicago Junction Railway. We pay the Chicago rate plus $2.70 or $1.35 a car. The unloading is paid for by the carrier. It is provided in the last column, at page 76 of the tariff, that the carriers will pay the Union Stock Yard & Transit Company $1 per car

for unloading live stock into suitable pens at the stockyards. (Tr. 52). There is no provision for payment of unloading charges on deliveries at pens on the Chicago Junction which are not the yards of the Stock Yards Company. The Omaha Packing Company does not pay the yardage charges of the Stock Yards Company, as it receives delivery direct at its plant without going through the Stock Yards Company. The Omaha Packing Company pays the Chicago rate plus $2.70 a car on shipments from the west. On shipments from the east they pay the Chicago rate without any terminal charge. That is provided in Galligan's tariff I. C. C. 182, on page 39, index 356, note reference 61. The Hygrade Company is an industry on the rails of the Chicago Junction Railway. (Tr. 53). It is shown as such in the directory of industries published in Galligan's Tariff I. C. C. 197.

[fol. 193] Mr. Curran: May I ask the Examiner that all of these tariff references be regarded as incorporated in the record in the absence of objection by other counsel?

Exam. Smith: Well, as I understand, you have referred to those tariffs. Now, the tariffs themselves are not incorporated in the record, and you do not mean exactly what you say there.

You have the reference to them, and you can use that reference as you are advised in your brief.

Mr. Curran: I want to have them introduced as evidence in this case.

Exam. Smith: No objection to that.

Mr. Connell: With the understanding he identifies the item and pages.

Exam. Smith: He is doing that fairly well so far.

By Mr. Curran:

Q. Is the Union Stock Yards & Transit Company an industry on the Chicago Junction Railway?

A. Yes, sir.

Q. Will you give us the tariff reference for that?

A. That would be listed in the same tariff, I. C. C. Number 197, Galligan's. (Tr. 54.)

Q. Have you the item number?

A. No, but they are shown here in I. C. C. Number 182—I am wrong, this is the Union Stock Yards shown in here. I have not the item number on 197.

Q. Can you give us the tariff references which will show us more completely what is meant by the Union Stock Yards as distinguished from Union Stock Yards & Transit Company?

A. Union Stock Yards is listed in Galligan's I. C. C. Number 182, as a station in Chicago—in the Chicago Switch-[fol. 194] ing District, Item 1490 on page 70.

Q. Will you show us what those items are?

A. It is shown as a station on the Chicago Junction Railway, and refers to Index Numbers 413 to 434 inclusive. 413 is on page number 39; 434 is on page 40. It includes the different locations in the Union Stock Yards.

Q. What are those locations as shown by the tariff?

A. Halsted Street District; Leavitt Street District; State Line District; House Number 6; East 47th Street District; Hoyne Avenue District; Damen Avenue District; West End District; and Middle District.

Q. In which one of those districts at the Union Stock Yards is the Hygrade Food Products Corporation plant located?

A. In the State Line District.

Q. And can you give us a reference to the Trunk Line tariffs of those trunk lines which concur in 20-R and 20-S, or I. C. C. Number 182 or 122? (Tr. 55.)

A. Yes, sir, I have a list of them here and will read them into the record with the appropriate page number:

Chicago & Alton I. C. C. Tariff No. A-2016, Item 65, page 9, and A-1929, Item 15, page 21.

Chicago Great Western Tariff I. C. C. No. 5256, Item 70, page 31.

Chicago & Eastern Illinois Tariff I. C. C. No. 91, Note 11, page 9.

Chicago, Rock Island & Pacific Tariff I. C. C. No. 11982, Item 455, page 17.

Chicago, Milwaukee, St. Paul & Pacific Tariffs I. C. C. No. B-6081, Item 80, page 49 and B-5866, Item 45, page 76.

Supplement 5 to Illinois Central Tariff I. C. C. No. A-10355, page 2.

[fol. 195] Chicago, St. Paul, Minneapolis & Omaha Tariff I. C. C. No. 4647, Rule 10, page 21.

Chicago & North Western Tariffs I. C. C. No. 9976, Rule 2, page 23 (Tr. 56) and No. 9788, page 15.

Atchison, Topeka & Santa Fe Tariff I. C. C. No. 10680, Rule 201, page 37.

Chicago, Burlington & Quincy Tariffs I. C. C. No. 17682, Item 400, page 16 and No. 17678, Item 36, page 14.

Supplement No. 5 to Wabash Railway Tariff I. C. C. No. 6554, Item 30-A, page 3.

Illinois Central Tariff I. C. C. No. A-10759, Rule 85, page 21.

Michigan Central Tariff I. C. C. No. 5865, Rule 2, page 12.

New York, Chicago & St. Louis Tariff I. C. C. No. 4878, Note 30, page 18.

New York Central Tariff I. C. C. No. L-S-1605, Section 1, page 19.

Pennsylvania Tariff I. C. C. No. 396, Item 90, page 16.

C. C. C. & St. L. Tariff I. C. C. No. 8563, Item 18, page 18 and No. 8552, Item 7, page 3.

C. & O. Tariff I. C. C. No. 11125, Rule 14, page 16.

Chicago, Indianapolis & Louisville Tariff I. C. C. No. 4448, Note 5, page 8. (Tr. 57.)

All the roads named *named* participate in Galligan's Tariff 20-R and 20-S and were subject to the provisions thereof together with their connections upon the lines of which shipments may have been originated. We have requested that deliveries of live stock be made to us upon our private siding.

I now offer Exhibit No. 12.

(Said document was thereupon received in evidence as Complainant's Exhibit 12 and is certified to this court.)

Exhibit 12 is a photostatic copy of a live stock contract issued at Sioux Falls, South Dakota, in September, 1930, [fol. 196] which was endorsed "Do not go into U. S. Yards Chicago, Illinois." We endeavored to arrange for delivery of this stock at our plant and had the live stock contracts issued accordingly. (Tr. 58.) We did this in other instances. We did it in connection with 22 cars from various points. This contract is typical of the contract in the other instances. We did it in 22 instances only.

Exhibit 13 is being distributed.

(Said document was thereupon received in evidence as Complainant's Exhibit 13 and is certified to this court.)

Exhibit 13 shows the 22 cars which we endeavored to bring into our plant for delivery on our own rails instead of into the Stock Yards Company's pens. (Tr. 59.) It shows the date of shipments, origins, car numbers and initials, route, and commodity, which in all cases was hogs, and the endorsement which was shown on each contract. The endorsements all indicated that the shipments were to be brought to our plant. Besides these 22 instances, in the case of consigned live stock, the Hygrade Company is named as consignee. Dead freight so consigned is never delivered to the Stock Yards Company.

Q. Why did you make these particular demands with these particular endorsements, which went beyond what was perhaps necessary in order to secure delivery at your siding?

A. We wanted to make it specific to the carriers that we desired the live stock delivered at our plant and not in the yards of the Union Stock Yards & Transit Company.

None of these cars were placed on our track. They were taken directly to the Union Stock Yards and unloaded and placed in pens there. We were notified we could get the stock or leave it. (Tr. 60.) After it was taken to the [fol. 197] stockyards it was placed in holding pens by the Stock Yards Company without our authorization or consent. It was unloaded by the Yards Company at its platform where it had been taken, in most instances by the Chicago & North Western; in one instance by the Illinois Central. After they had been unloaded without our consent we removed the shipments from the pens of the Stock Yards Company and brought them to our plant. Eventually we had to pay the yardage charges. We first paid the bills after eliminating the Yardage charge (Tr. 61) but the Stock Yards Company notified us that they would hold our stock until the yardage charge was paid on the other stock. So, under compulsion, we paid the charge.

Q. Did you make any other special demands after that date for delivery to your plant outside of having your live stock contracts name you as the consignee?

A. No, sir, we made no further attempt after that. We had endeavored to arrange it by telephone prior to this, and there has been some conversation with the road haul carriers, but nothing was put in writing until these contracts were made.

By Mr. Towner:

Q. What road haul carriers?

A. The Chicago & Northwestern particularly. They are the line that carries most of the live stock into Chicago.

Q. Do you mind telling us to whom you talked?

A. Mr. McNie.

By Mr. Curran:

Q. Why did you not make any further demands after these particular ones were made?

A. It appeared to be useless. At that time we started to draw up our complaint.

We were never given delivery of any live stock covered by this complaint on our private siding either before or [fol. 198] after. (Tr. 62.) The reason assigned by the carriers for failure to make the requested delivery is contained in a letter from Mr. Kemp dated September 20, which stated that before he could deliver live stock at our siding we would have to assure him that the Chicago rate would be paid plus the $12 switching charge.

Exhibit 14 is now being distributed.

(Said document was thereupon received in evidence as Complainant's Exhibit 14 and is certified to this court.)

[fol. 199] Exhibit 14 is a copy of Mr. Kemp's letter of September 20. (Tr. 63.)

By Mr. Curran:

Q. Now, Mr. Kemp in the second paragraph of his letter sets forth the provision of what he says is Galligan's 20-S, page 28 Item 65, and that provides the carload freight for delivery on a terminal carrier within the Chicago District, will not be delivered and so forth, until all charges assessed and so forth, are paid or satisfactorily arranged for. (Tr. 63.)

Have you made any arrangement for payment of such charges?

A. We have a bond filed with Mr. Kemp's office. At the time this shipment moved bond was for $2000, and guaranteed payment of all lawful freight charges within 96 hours. We have a similar bond on file with the Yards Company covering the payment of charges to it. The switching charge referred to by Mr. Kemp is covered by Chicago

Junction Railway Tariff I. C. C. No. C-J-44, Item 140, on page 6.

Q. Will you now state whether you actually ever refused to pay the switching charge which Mr. Kemp said applied to this shipment?

A. We told Mr. Kemp's office that we would pay the lawful tariff charge, but he was unwilling to accept that assurance as sufficient to justify the delivery of these cars at our plant. (Tr. 64.) I did not personally tell that to Mr. Kemp. (Tr. 65.) Mr. Norris, to whom Kemp's letter was addressed, was my predecessor as Traffic Manager of the Hygrade Company. At that time I was Assistant Traffic Manager and familiar with the negotiations and these 22 cars. I was with Mr. Norris when he talked to Mr. Kemp and heard what he said. He said he would pay the lawful tariff charge. That is all he said. He would not promise [fol. 200] to pay the $12 charge in addition to the Chicago rate. He declined to pay it, to Kemp's personal satisfaction. (Tr. 66.) We have a copy of the bond on file with Kemp, which we will furnish for the record within 10 days. It has been increased since that time. (Tr. 67.)

We did not receive any notification in advance that these [fol. 201] particular cars of live stock had arrived at the stockyards. We knew of course when they were due because they move on schedule trains. The notice we received was given us by the Stock Yards Company only after arrival. It was not notice given by the carriers who were responsible for the movement.

Live stock are sometimes injured after delivery in the yards of the Stock Yards Company. The line haul carrier pays the damage. (Tr. 68.)

The next exhibit is No. 15.

(Said document was thereupon received in evidenced as Complainant's Exhibit 15 and is certified to this court.)

Exhibit 15 is a photostatic copy of claim Number 19852, filed by the Hygrade Company with the Burlington Railroad for one dead hog and seven crippled hogs in a shipment from South St. Paul on September 11, 1931. (Tr. 69.) The dead hog was dead before arrival at Chicago. It was so reported by the Stock Yards Company. The seven crippled hogs were crippled after being unloaded. This was also reported to us by the Stock Yards Company.

That report will be our next exhibit. The damage for the crippled hogs is shown as $56. That is figured at the weight of the hogs at an arbitrary amount of 2¢ per pound, which is settled by the carriers on the basis of 50%. (Tr. 70.)

The next exhibit is No. 16.

(Said document was thereupon received in evidence as Complainant's Exhibit 16 and is certified to this court.)

Exhibit 16 is a letter from the Freight Claim Agent of the Stock Yards Company, advising that in the cars [fol. 202] shown in our claim Number 19852, 365 hogs were unloaded and yarded; that there was one dead hog at the time of delivery, and that when 358 hogs were received 7 cripples were left back for drayage. That is the letter which I conclude that the Yards Company admitted that the hogs became crippled after unloading. The car numbers shown in the letter correspond with some of the car numbers shown on Exhibit 15. Where animals are crippled or die before arrival at the stockyards, the ordinary basis of settlement is 50 percent. (Tr. 71.) We are notified by our drivers of the hogs that they receive in each shipment. They also notify us of any deads or cripples, and whether the deads or cripples were in that condition when unloaded from the cars. They secure that information from employees of the Stock Yards. We had no notification as to these particular shipments that there were cripples before arrival. The dead was shown as having been dead when unloaded.

The next document is Exhibit 17.

(Said document was thereupon received in evidence as Complainant's Exhibit 17 and is certified to this court.)

Exhibit 17 is a photostatic copy of the C. B. & Q. check Number 17121, given us in payment of three claims, one of which was claim Number 19852 on which they paid us $37. (Tr. 72.) Quite frequently live stock dies or is injured after arrival. As to whether it happens in every instance or in any instance that the Stock Yards pays for such damage: We have never been able to induce them to pay. The line haul carrier pays for the damage. We have never been able to induce the Stock Yards Company to pay. The transaction reflected by Exhibits 15, 16, and 17 is typical of what happens in the case of injuries or crippling of live stock after arrival.

The Hygrade Company and the Omaha Packing compete with each other in selling products of the same nature in [fol. 203] Chicago. I have seen their product and ours in the same store. Those products might be hams, bacon, sausage, or canned meat. (Tr. 73.) There is no charge in any tariff on file with the Commission for the storage of live stock after delivery. Live stock is not subject to demurrage. There is no restriction as to the length of time we can store at the stockyards if we see fit to do so, and certainly no limitation in the tariffs on file with the Commission. We requested permission from the Yards Company to take photostatics of chutes and pens but were refused, the Stock Yards Company saying that they had advice from their attorneys. (Tr. 74.)

Mr. Towner: I told them not to let you take the pictures because a picture showing the entire layout cannot successfully be made. (Tr. 75.) I agreed to have made and produce a blue-print and I have done this. (Tr. 76.)

The Witness: Boyd's Tariff I. C. C. No. A-2217, Item 460, page 27, provides that hoof weight where obtainable will be used for collection of freight charges. Item 480, Rule 9, Section A, on page 30, provides that when weights are obtained for the assessment of freight charges no charge will be made by the carrier for the service. (Tr. 77.) That provision only applies on the western lines, but there is a similar tariff of the eastern lines in regard to the first rule. I have not checked as to the second rule. The carriers [fol. 204] impose no charge for weighing under any tariff filed with the Commission and relating to the present issue, but the tariff I have mentioned provides a charge for the second weighing. (Tr. 78.) We never have a second weighing of live stock at the stockyards on shipments consigned to us. No freight charges on live stock delivered to us are prepaid. Payment is always made after delivery of the stock at Chicago. The freight bill (our Exhibit 11) is sent to us by the Stock Yards Company, is checked and payment made by voucher to the Stock Yards Company. The Hygrade Company actually paid and bore the charges on all shipments of live stock covered by this complaint, whether imposed under I. C. C. tariff or otherwise, as shown on the freight bills (Tr. 79.) I know that this is true because I personally O. K. the bills for payment if I am in Chicago; otherwise they are approved in my department, and I know

the terms upon which the live stock is purchased. I know the freight charges are paid because I receive the paid bills after they are sent back from the Stock Yards Company.

[fol. 205] Cross-examination:

We do not now receive direct deliveries of live stock at the Chicago Junction Railway track serving our plant. The Chicago Junction is the only railroad that can give us the service. The Hygrade Company has operated the plant since August, 1929. I think the Allied Packers bought it in May, 1922. Prior to May, 1922 it was operated as an independent plant. (Tr. 80.) The tracks of the Chicago Junction have always been in the plant except the two on the west side which were built, I think, in 1924. All of the present tracks of the Chicago Junction serving our plant, except the two on the west side, are used for purposes which would prevent their use for the unloading of live stock in any quantity. We might unload a single car or two cars. For practical purposes they are not available for such unloading, and the two tracks on the west side are the ones we would use if we had such delivery of live stock. Those two tracks would hold ten or twelve cars each. (Tr. 81.) We propose to use only one track because it would be difficult to unload from the westerly track. Our present track facilities for unloading of live stock are, therefore, limited to one track which will hold 10 or 12 cars at a time, and that is all we would have unless we made some change in the location of the tracks. We do not now have an unloading chute but we did have. We have an alleyway through which the stock could be driven from the one track [fol. 206] to our pens, but it has never been fenced. (Tr. 82.) Stock is driven through the streets of Chicago. I have seen them going past our plant every day. To receive live stock at our plant in the volume we have received it in the past couple of years, on direct shipments, we would have to have some means of unloading the animals from the car. That would mean a permanent construction, which is what we contemplated. (Tr. 83.) It would be practically necessary to also have fenced alleys. We haven't those facilities at this time. At the time the live stock was billed in, we had a portable unloading chute which was on wheels. If we had all of our cars on direct delivery to our plant, I think our present pens would be sufficient. I think

we could handle those animals without delaying our handling of animals bought on the market at the yards.

We have no scales now at our Chicago plant. We have a set at Buffalo that is not in use and it was packed ready to move to Chicago. (Tr. 84.) We propose to install scales at the Chicago plant. That would have to be done. We would not expect the railroad to weigh the live stock on our scales. We would do it ourselves. We do not do it now.

I am not familiar with the situation of the Omaha Packing Company's plant and do not know what its facilities are. The question of taking care of our needs for facilities is a matter for our New York officials to determine. (Tr. 85.) So far as I know, it hasn't been determined yet.

[fol. 207] We complain of the assessment of the yardage charges of the Stock Yards Company on live stock consigned direct to our plant and received through the Stock Yards Company but do not complain of the charge on cattle which we buy in the stockyards. We do not pay any yardage charge directly on cattle we buy at the Stock Yards but we certainly pay it when we pay for the cattle. We do not complain of that charge because the cattle are afforded further service such as sales service. (Tr. 86) The Yards Company furnishes sales pens for the commission men to sell the cattle in and they are moved from one point to another. The aniamls are driven when necessary, are furnished pen service when necessary, and are furnished water.

Eighty-five per cent of the shipments consigned direct to us, all of which come through the stockyards, are yarded at the stockyards. We complain of the collection of the yardage on these animals because 90 per cent of them could be taken immediately to our plant if there was any advantage in so doing. (Tr. 87). We have this complaint on the portion of our direct shipments which are yarded at the present time. They get the pen service and are also driven from the chutes to the pens but we drive them from the pens to our plant. They get substantially the same service but in lesser degree than the animals bought at the stockyards. As to why we complain of the payment of the yardage on the one and not on the other: The other cattle do not come in to us direct. All we are asking is free delivery on live stock billed to us direct. We can get along without the yardage service on all such live stock. (Tr. 88). About 15 per cent of the animals consigned to us at the stockyards

are driven by us from the unloading chute direct to our [fol. 208] plant. We take them through the alleys of the Stock Yards Company and through an elevated driveway, over the pens and away from traffic. There is also a tunnel under the proposed Pershing Road. I do not know who owns the tunnel, but all the rest are facilities of the Stock Yards Company. We use those facilities coming for stock. (Tr. 89) That is true of animals which we drive from the unloading chute direct to our plant. The other 85 per cent of such animals are transferred by stockyard employees to other pens and are given the necessary attention.

Q. What you want then is a delivery without the payment of any excess charge?

A. Without the payment of anything over the freight charge on file with the Commission.

Q. Didn't you know, or do you know, that you can get that now on the line of every western line in Chicago?

A. At a point where it would be feasible to move it to our plant?

Q. I am not speaking of that. You can now get the delivery, can you not?

A. We can get delivery on the Chicago & Northwestern at Proviso.

[fol. 209] Q. Exactly. Why don't you take that?

A. Too far away, outside the city limits.

Q. It is impractical, is it not?

A. Yes, sir.

Q. What you want then is not delivery on the line of the line (Tr. 90) haul carrier without additional charge, but you want delivery at the place you have seen fit to locate your plant without additional charge, isn't that it?

A. Yes, sir.

Q. Now, what you say with respect to the Chicago & Northwestern is also true of the other western lines, is it not?

A. Some of them. The Chicago, Milwaukee, St. Paul & Pacific has delivery at Galewood; also outside the City limits.

Q. But all in the Chicago District, the Chicago Switching District?

A. In the Chicago Switching District, yes.

Q. I am advised that Galewood is not outside the city limits. Do you know?

A. I thought it was. It is north of Oak Park.

Q. Well, that is the Milwaukee point?

A. It is within the switching district.

Q. All of these points are within the switching district, are they not?

[fol. 210] A. Yes, sir.

Q. Isn't that true as a general proposition on the lines of the other carriers that haul your stock into Chicago? Most of it comes in on the Chicago & Northwestern?

A. Most of it comes in on the Chicago & Northwestern.

Q. Isn't that generally true of the others that haul your inbound stock? (Tr. 91.)

A. Most of them have unloading pens on the outskirts of the city, or just outside.

Q. And those are the points to which the Chicago rates apply on live stock are they not?

A. Not according to the switching tariff.

Q. Where else could they apply?

A. To the Union Stock Yards.

Q. But there is a difference in the charge, is there not?

A. $2.70.

Q. Exactly.

A. Yes, sir.

Q. Now, the flat Chicago rate of these railroads applies to these points you have spoken of, does it not?

A. Applies to every connection with the Chicago Junction Railway.

[fol. 211] Q. You can get delivery at all of those points with no charge except the Chicago rate, can you not?

A. Yes. We could get delivery at Clinton, Iowa for less than the Chicago rate.

Q. You think that is comparable, do you?

A. Just about as convenient. (Tr. 92.)

[fol. 212] During all the time that our plant has been operated by the Hygrade Company and its predecessor, the Allied Packers, these deliveries have been made at the stockyards. In 1925 the Allied Packers attempted to make arrangements for plant delivery by requesting it, but had no stock billed that way. We first started billing it for direct delivery in September, 1930. (Tr. 93). I know it was talked over in various cases. We first attempted to bill stuff that way in September, 1930, but it was talked over in the fall

of 1929. The shipments shown on Exhibit 12 are not those referred to in Exhibit 14. Exhibit 14 was written in connection with other shipments shown on Exhibit 13. We continued billing cars in this way until the end of September when we cancelled our instructions for that style of billing. (Tr. 94). I do not think we ever absolutely refused to pay the $12 switching charge of the Chicago Junction Railway. Mr. Kemp asked us for assurance that it would be paid and Mr. Norris told him he would pay the correct tariff charge. I think in all probability that Kemp told us that this de-[fol. 213] livery of the live stock under discussion would be made at your plant; that the Chicago Junction demanded prepayment of its charges and that he (Kemp) did not have the money with which to pay them and it would be necessary for us to prepay them, and that our company definitely refused to pay on the ground that the Chicago rate applied, although I did not hear any such conversation. I don't know definitely but I think that was very likely what happened. (Tr. 95) I still think the Chicago rate, plus $2.70 a car, applies to our plant. I have referred to the tariffs which I think makes that rate applicable. I claim that if we paid the switching charge of the Junction we would be overcharged. (Tr. 96)

Examiner Smith: As I see the complainant's case, as far as it has gone at the present time, it is immaterial to the complainant whether the Stock Yards arrangement is good, bad or indifferent.

You do not want their service. You want the service at your own plant, is that correct?

Mr. Curran: We wish that, and we also wish to have free delivery at the Stock Yards, because the Stock Yards in making delivery is performing a transportation service, and we complain of several violations of the Act because of the fact that this yardage charge is imposed in the first place—

Exam. Smith: Now, just one minute. I think I have your position clear. It is immaterial in either event whether their service is good, bad or indifferent. What you want is to be relieved of that charge, is that it?

Mr. Curran: That is correct.

Exam. Smith: So the photographs would do you no good in any instance.

Mr. Curran: What we wanted to show by the photographs is (Tr. 97) the facilities for unloading. Showing that what [fol. 214] we have is in effect a live stock depot which performs transportation service. We are going to attempt to show that without the photographs, but our feeling was that if we had the pictures of these unloading chutes, of the holding pens and of the scales that we could make a complete picture of what the process is on the Yards.

We are going to do that—we have not finished with that, but we won't be able to do it as well as if we had photographs of the things we were going to describe.

Exam. Smith: Let me see if I follow you there. The live stock in some manner gets into the car that is adapted for its destination. When it gets to the destination it must be unloaded, and to unload it certain facilities are necessary. Isn't that correct?

Mr. Curran: That is correct.

Exam. Smith: And that is all there is to it. Now, they have approximately the correct facilities at the Union Stock Yards, haven't they?

Mr. Curran: That is correct.

Exam. Smith: And you claim that is part of the transportation?

Mr. Curran: Let me refer to page 76 of Galligan's Tariff 20-S, I. C. C. Number 182, in which this statement is made: (Tr. 98)

"Carriers named in first column will pay the Union Stock Yards & Transit Company the charges shown below for unloading live stock consigned for delivery at the Union Stock Yards, Chicago, Illinois, into suitable pens at said Stock Yards"—

Now, there is a question of tariff construction as to what that means.

Mr. Towner: The tariff provides the meaning for it. The same column down below.

[fol. 215] Mr. Curran: If you will permit me to finish. One of the issues it seems to me in this case, is whether the pen in which this live stock is unloaded is suitable pen within the meaning of paragraph 5 of Section 15 of the Act, which would clearly prevail as to the requirement of the law over any tariff provision. One of the issues is the question of the pens in which cattle are unloaded, whether they are suitable pens.

Mr. Towner: I would like to interject there this thought. The complaint alleges that these yardage charges at the Stock Yards Company, as Mr. Curran states, are part of the transportation.

The Yards Company denies that, and denies the jurisdiction of the Commission over those charges.

Now, if the complainant is willing to abandon that part of the complaint, my position with respect to this case would (Tr. 99) change very substantially, but I do not understand that they are willing to do that, and they would have to do that, Mr. Examiner, to produce the situation you have in mind. That is correct, is it not, Mr. Curran?

Mr. Curran: We are not withdrawing any part of our complaint, that is true.

Mr. Towner: That is what I meant.

Exam. Smith: I had hoped that I could help the case a little bit. I withdraw that hope.

Mr. Towner: I wish you could too.

Mr. Connell: Mr. Curran, I understood you to say that you wanted not only direct delivery of the cars to the plant of the Hygrade Food Products Corporation, but also free delivery of live stock through the U. S. Yards.

[fol. 216] Mr. Curran: We have no complaint against the terminal charge of $2.70 or $1.35. We do complain against the yardage charge which is clearly a transportation service in our opinion and which is not covered by any tariff on file with the Interstate Commerce Commission; and which, if added to the applicable rate, which we do not attack, that is the Chicago rate, plus the terminal charge of $2.70 and $1.35, that rate becomes unreasonable.

We further claim that it is a violation of Sections 2 (Tr. 100) and 3, because of the service rendered to the Omaha Packing Company.

Mr. Connell: No, I am trying to find out what would satisfy your complaint. Whether direct delivery at the plant of the Hygrade Food Products Corporation would satisfy the complaint.

Mr. Curran: That would satisfy one aspect of the complaint.

Mr. Connell: At the same time you want both services. That is, direct delivery at the plant at the Chicago rate plus $2.70 and $1.35; you also want free delivery service at the Union Stock Yards at the same rates.

Mr. Curran: At the same rates.

Exam. Smith: Well, I think it is plainer anyway now.

Mr. Connell: I was just wondering if there is anything else they want.

[fol. 217] The Witness: The eastern line tariff providing for the use of destination hoof weights in assessing freight charges is Jones Tariff I. C. C. No. 2248, Item 4185, page 297. (Tr. 101.)

We probably use most of our storage pens every day to some extent under our present method of handling. We buy a great deal more stock on the market of the stockyards than we have consigned to us direct. We sometimes leave that stock in the yards after we buy it, and sometimes drive it direct from the buy. Our present pens are not used to capacity or anywhere near it every day, but probably every pen is used for some time during the day. All of our pens are available for the storage of all classes of live stock. (Tr. 102.) We do not keep cattle and hogs in the same pen at the same time, so that if we had one kind of live stock in the pen, it would not be available for the use of any other kind of live stock at the same time, even though not being used to capacity. The figures I gave represented the capacity of the pens. After the pens have been used for one kind of animal they would probably require cleaning before being used for another kind. The capacity I testified to figured filling all of the pens at once with one kind of animal. If we had so many hogs that we had to have hogs in each pen, we would have no pen space for another class of animal at that time. (Tr. 103). With respect to the shipments consigned direct to our company, [fol. 218] we were not willing to accept delivery of these shipments and pay the $12 switching charge of the Chicago Junction. We do not want direct delivery at our plant if we have to pay the Chicago Junction charge. That is my understanding of it. The bond I spoke of guaranteeing the payment of all lawful charges within 96 hours was on file with Mr. Kemp, the Stock Yards District Agent, and ran to the Stock Yards District Agency. (Tr. 104). It is made out to the Chicago, Rock Island & Pacific Railroad Company, Chicago Junction Railway Company, headed Stock Yards District Agency, and lists the various railroads for which Kemp is agent.

Dealing with Exhibits numbered 15, 16 and 17, I made

claim against the C. B. & Q. Railroad on information furnished to our drivers by the Yards Company. As to how it happened that the check in settlement of our claim (Exhibit 17) is dated prior to Exhibit 16, the letter in which we were advised as to the amount of the damage: We secured this letter from Mr. Wheeler with the intention of using it here as an exhibit. We had the information but not in the form of an exhibit. (Tr. 105). The stockyards people told our hog drivers that the crippled hogs became crippled after unloading, and the hog drivers noted it on the back of the scale ticket. I don't know who told them that nor who in the employ of the Stock Yards Company made the statement. The Stock Yards Company makes a record of the animals that are unloaded. I have not seen that record with respect to this shipment. That record is made as the animals come out of the car and would correctly show their condition. (Tr. 106). If there were any cripples it should be shown on that record. An unloading certificate was sent to us with Exhibit 16. I rely on the letter as repre-
[fol. 219] senting a confession by the Stock Yards Company as to the time when the animals became crippled. So far as I know, we have never filed a claim with the Stock Yards Company fo. damage to animals, and I do not know whether anybody else does so. (Tr. 107). As to whether many claims are filed with the Stock Yards Company, I do not know.

The situation with respect to delivery of live stock to us by the Stock Yards Company is reasonably identical as it is with respect to every other packing plant in the same neighborhood but there is some difference in the distances they have to drive. So far as I know, they all pay the same charges, including Swift, Armour and Wilson. So far as I know, we are in the same situation. (Tr. 108). All of those companies have plants immediately adjacent to the yards or within the square mile ordinarily spoken of as the yards. We are just outside, being across the street, Wilson is within and Armour and Swift are inside. I should think the Swift and Armour plants would be closer to the Yards than we but Wilson would be farther away. I can't say for certain about Armour because I don't know just where the hogs are driven to. (Tr. 109). On shipments to all these plants, the handling charges paid and everything else is identical with what we get.

Exhibit 1 was furnished to us by Mr. O'Brien of the Chicago Junction Railway, and so far as I know it is absolutely correct. Our plant is designated on that map by circle reference Number 1. (Tr. 110). That plant is served [fol. 220] only by the Chicago Junction Railway, no other line getting into the property. The nearest other line is a mile or two miles away, and maybe more. The two tracks extending southward from another track extending eastward on Exhibit 1 are shown on Exhibit 2. They are the two tracks I previously described as our ice track and our coal track, but the branch extending to the loading platform is not shown. (Tr. 111). Exhibit 2 shows the track running south to the Hair House. The tracks we propose to use for unloading are not shown on Exhibit 1. I think they were built in 1924 when the branch of the Chicago River was filled up. They were on the property when the Hygrade Company bought out the Allied Packers in August, 1929. (Tr. 112). Since the Allied Packers acquired the tracks, they have been used for storage of refrigerator cars, some of which were owned by the Independent Packing Company. The tracks will hold approximately 20 cars, but I think we have had as many as 24 cars there. We have to have some tracks for storage purposes. (Tr. 113). If we used these tracks for unloading live stock we would be dependent on the Chicago Junction Railway for storage space, but we keep our private refrigerator cars moving pretty steadily.

Our cattle and hog pens are shown at the lower righthand corner of Exhibit 2 and are shown more in detail on Exhibit 3. The slaughter house is immediately north of the pens and probably five floors up. The pens are adjacent to the slaughter house and are used for storing stock until it is taken to the slaughtering floor. (Tr. 114). They would still have to be used for that purpose if used to [fol. 221] some extent for storage. In driving animals from the two tracks shown on the left of Exhibit 2 to the pens we would have to cross two switch tracks, but the switch tracks are not used that far south.

The Omaha Packing Company plant is shown in Exhibit 1 by Circle Number 2. It is located on the Chicago, Burlington & Quincy and no other line. It is not served by the Chicago Junction. (Tr. 115). It is about two miles from the Chicago Junction across the Chicago River. I said

that under my interpretation of Galligan's tariff the Union Stock Yards as referred to therein was a sub-station of Chicago. The Exchange Building at the stockyards is on Exchange Avenue, and on Exhibit 1 I put the words "Union Stock Yards" at about that location. (Tr. 116). The stockyards runs from the unloading chutes south of Pershing Road to 47th Street. The tariff shows the stock yards in Zone 1, which is the inner zone located on the Chicago Junction, a terminal carrier.

The Union Stock Yards is referred to in Galligan's Tariff 182 on page 70, Index No. 1490. The Tariff shows Union Stock Yards, Illinois, is in Zone 1, that is, the inner Zone, and is located on the Chicago Junction, a terminal carrier. For rates from or to points on the various road-haul carriers, the Tariff refers to Index Nos. 413 to 434 which are on pages 39 and 40. All of these Index Numbers are headed Chicago, Illinois, (Tr. 117). They are all districts on the Chicago Junction.

When we get weights on live stock from the Stock Yards Company we furnish the weights to the Western Weighing Association who furnish them to Mr. Kemp for the purpose of billing freight. We use the scale tickets to check our freight bills. We do not settle with the consignor on the basis of those weights. We settle with the consignor on basis of the invoice weight. That would be the weight at the point of origin.

[fol. 222] Cattle load 28 to 30 to a car, making a weight of 28,000 to 30,000 pounds. The minimum number is 22. (Tr. 118). A car usually loads over the minimum with cattle.

We generally move stock from the stockyards within six hours after arrival, except that stock received on Saturday and Sunday would be held over until Monday. With the exception of such stock, we seldom allow any to remain in the yards very long. I don't know where the Omaha Packing Company gets its live stock. (Tr. 119). I don't know why we let our stock stay in the stockyards at all unless it is that we are not ready for it at the plant. Generally, we drive enough animals the night before to start the killing gang in the morning, holding the animals over night in our own pens. The animals that we do leave in the stockyards are left there for our convenience because we

have enough on hand to work on. It doesn't cost us anything to leave them. We take the animals from the stockyards to our holding pens shown in Exhibit 3. (Tr. 120).

The notation on Exhibit 13 "Do not deliver U. S. Yards" was a failure on the part of the shipper to carry out our instructions. They consider the U. S. Yards the same as the Union Stock Yard & Transit Company. We instructed them to bill the animals to our plant at 3830 Morgan Street, "Do not go into Union Stock Yards & Transit Company." I will furnish a copy of those instructions in the morning.

[fol. 223] Redirect examination.

(Tr. 121). I know of no tariff provision restricting the length of time during which we can keep animals at the stockyards of the Union Stock Yards & Transit Company.

We only intended to use one of the tracks shown in our Exhibit 2 because that would be enough to take care of the cars of live stock we were getting in at the time. I think our Exhibit 4 indicates that. The highest number of hogs we received in any day was 1,311, the highest number of cattle 188, and the highest number of sheep 282. They came in different months over different railroads and at different times of day. (Tr. 122.) I think space for ten cars would accommodate any delivery the Chicago Junction would make to us under present operations. We could use both tracks. We could unload on the west side of the track and drive the animals around the cars on the other tracks, or we could bridge the space between the tracks and unload through the cars spotted on the more easterly track. We did not increase our facilities for unloading and storage in 1930 because the carrier refused to spot the cars on our track at the Chicago rate. We had the blue-prints prepared, but if we had constructed the facilities they would have been idle for two or three years until this case was decided and would have been in the way of our other operations in the way of storing cars. (Tr. 123). When we made our demand we obtained a portable un-[fol. 224] loading chute which would have been sufficient until there was permanent construction. Fences about runways are convenient for driving livestock but not necessary. Our entire property is fenced.

Deliveries are made to other packers at approximately the point designated as the location of the Hygrade Food

Products Plant on Exhibit 1, which are conveyed for considerable distances through the open streets. Deliveries are made to the Illinois Packing Company, which is located on 38th Street, and the animals are driven north on Morgan Street to 38th. Deliveries are made to the Burnett Packing Company, which is at the easterly end of the Chicago Junction Spur, from which our branch tracks lead and hogs are driven on 38th Place to their pens. (Tr. 124). This is all outside of the stockyards. If we drove the animals from our temporary facilities through our own yard we would be entirely on our own property and we would not have difficulty driving through the streets. The weighing at the stockyards is done by the Union Stock Yard & Transit Company weighmaster, but we can take the animals without having them weighed if we wish. We had available scales which could have been installed if we got direct deliveries. They are in Buffalo now not being used. (Tr. 125). We think we now have sufficient facilities to take care of any demands which we have made.

Recross-examination:

We did not add to our facilities because it would not have been as convenient in storing cars. (Tr. 126). The cars would not have been as easily accessible from the outside for painting or cleaning. We have painted cars on those tracks, but I do not think we have cleaned them. The two tracks are sort of general utility tracks. (Tr. 127). It [fol. 225] would be possible for us to make both tracks on the west side of our plant available for unloading if necessary. We could not then use the tracks for storage purposes and would have to use other tracks of the Chicago Junction. We now use the tracks for some car repairing and we would have to send that out to be done. I think one track holding 10 cars would be sufficient for our purposes. (Tr. 128). If 15 cars of live stock came in consigned to us, one track would not be sufficient if they came on one drag and could not have taken them in one setting. There would have to be two settings. The same would be true as to 13 cars inbound on February 19, 1931. The Chicago Junction would have to hold some cars while the number you could take were set in, unloaded, and the empties taken out. Then another train would have to come in and set the balance. (Tr. 129). If during the time some cars were

being held it became necessary to unload the stock for feed and water to avoid law violation, that would be an operating matter for the railroads and would not disturb us. We have capacity in excess of 13 and 15 cars if we see fit to use it. In an emergency we could put about two cars on each of the two tracks on the extreme right adjacent to the cattle and hog pens. The extreme westerly limits of our property are indicated on Exhibit 2 by the fence. (Tr. 130). There is about 56.85 feet between the tracks on the [fol. 226] left and the westerly limits of our property. I do not know what the figure 187 applies to. (Tr. 131). I think we could unload a couple of cars on each of the two tracks east of the power house at the south end of the tracks. We seldom have a car on the more easterly track marked "switch track." We generally have a car on the Power House track which would have to be taken out to put cars of stock on the south end of either track. (Tr. 132). Our plant generally starts at 7 o'clock in the morning and we work until we get through. We have a night foreman so we could take delivery of live stock when the plant is closed.

G. A. Hoffelder was thereupon called as a witness for complainant, and being duly sworn testified as follows:

I am Assistant General Freight Agent of the Chicago, Burlington & Quincy Railroad Company. (Tr. 134). As I understand it, I was to appear at the hearing and testify generally that there had been a movement of live stock switched from Western Avenue to the plant of the Omaha Packing Company located on our rails at O'Neil and Halsted Streets, which live stock we received from connecting lines at Chicago. This live stock originates in a number [fol. 227] of states but most of it comes from Illinois, Wisconsin and contiguous states west of the Mississippi River. (Tr. 135). The movements in question were principally over the lines of the western carriers. (Tr. 138). There were some shipments from Minnesota, Iowa, Missouri and Nebraska. I cannot say specifically what western defendants participated in the movements, but I would say that there has been a movement from stations served by virtually all of the western roads. (Tr. 139.)

Cross examination.

The Chicago Junction Railway did not participate in the transportation of any of these shipments to the Omaha Company's plant. I don't see how it could participate in a movement to that plant. I said that the Chicago, Burlington & Quincy delivered these cars which were delivered to it by other carriers bringing them into the Chicago District.

Examiner Smith: The Chicago Junction is merely a local terminal line, is it not?

Mr. Connell: It is. (Tr. 140).

Examiner Smith: But it does not engage in line haul?

Mr. Connell: That is correct.

[fol. 228] Augustus Downing was thereupon called as a witness for complainant, and being duly sworn testified as follows:

I have been engineer for the Hygrade Company for about six years. (Tr. 141). Before then I was Supervising Engineer for the Allied Packers and Engineer for John Morrell & Company. I have charge of construction work, maintenance and general engineering work for the Hygrade Company. I am generally familiar with the construction found at the Stock Yards Company.

The map shown me purports to show a section of the Union Stock Yards. It was in our files but I don't know where it came from and do not know who prepared it. (Tr. 142). I checked the map a few days ago and it is substantially the same as the present construction at the Stockyards. I did not check all the figures, just checked it generally. I only went over the trackage with the map in my hand. (Tr. 143).

Mr. Towner: I have a correct map here and you can have it now.

Mr. Curran: That will answer all my purposes. (Tr. 144).

(Said map was thereupon received in evidence as Complainant's Exhibit 18 and is certified to this court.) (Tr. 145).

On this map the tracks at the extreme northerly part of [fol. 229] the quarter of the map opposite the American

Sand & Gravel Company are switch tracks of the Chicago Junction Railway Company. (Tr. 146) Immediately south of those tracks the unloading chutes for unloading livestock are shown on the map in the form of a "Y" or in the form of tuning forks set in square cubicles. The square cubicles are chute pens. The unloading platform is just north of the cubicles about parallel with the rails and adjacent to the chutes. (Tr. 147). The blocks marked "incline" shown on the map south of the unloading chutes are inclines for passing livestock from the unloading chutes up to the second story holding pens. The square blocks immediately south of the inclines, in the space between the northerly and southerly tracks, are spaces to represent holding pens. The word "incline" immediately south of that is the same as the other "incline." There is another series of unloading pens on the tracks to the south. The south is toward Exchange Street. The same situation is shown with respect to the track which is south of the second series of unloading platforms and also with respect to the next line of tracks which runs east and west on the map. (Tr. 148). I observed the unloading chutes and am familiar with that type of construction. They are all about the same size. I prepared a diagram showing an unloading chute and the character of the facilities it contains.

(Said document was thereupon received in evidence as Complainant's Exhibit 19 and is certified to this court.)

[fol. 230] (Tr. 149). Exhibit 19 shows the plan of the unloading chutes with the unloading platform and a reproduction of a car on the railroad tracks. Livestock are driven from the car across the unloading platform down an incline and into either one of the unloading chutes. The gate at the bottom is thrown to one side or the other to divert the stock into one chute or other. The cross hatch shown on the unloading platform toward the center is the hinged section of the floor of the platform which is raised to accommodate the upper deck of a double deck car. The incline leads down into the unloading chutes on either side of the incline. (Tr. 150). At the bottom there is a gate which can be swung to shut off one division from the other. I would call those divisions "unloading chutes" but I did not see the word marked on any fence in the stockyards. When the stock moves down the incline they go into one

of these chutes or pens. (Tr. 151). The movement of the livestock is from these pens into the storage pens. I stepped off the chute pens, and I should say they are about 20 by 30 feet.

Cross-examination.

The chute pens are large enough to hold one deck of livestock but not large enough to hold two decks. I did not see two decks in one of them. The number of hogs in a double deck car would depend on the weight of the hogs. (Tr. 152). [fol. 231] You can usually load 120 hogs in a double deck car and 160 sheep. Between the unloading chutes or chute pens and the holding pens there is an alleyway. The unloading chutes open into the alleyway. (Tr. 152).

Edward E. Hubbard was thereupon called as a witness for complainant, and being duly sworn testified as follows:

I am assistant to the head hog buyer of the Hygrade Company and have been for three years. Prior to that I was in the same position with the Allied Packers for 5 years and the Frye Packing Company for 9 years. I am on the property of the Union Stock Yard & Transit Company daily from 7 A. M. until trading has stopped. (Tr. 154). I am familiar with the general layout and methods of operation in the yards particularly with respect to unloading and delivery. Stock arriving at the yards is delivered by the carriers to the platform of the Stock Yards Company where it is unloaded by the stockyards men into chutes. It it then taken by the Stock Yards Company employees to holding pens on the main floor. Sometimes stock is delivered to sales pens on the main floor. The Hygrade Company takes delivery at the unloading chute 5 per cent to 10 per cent of the time. (Tr. 155). Where delivery is not taken, the stockyards people move the animals to an unload- [fol. 232] ing pen. On Exhibit 18 any of the pens between the two lines of trackage south of the Chicago River and between the following two lines of trackage are holding pens. The livestock is taken from the chute by the Yard Company, and placed in holding pens under Stock Yard Company locks. Watering is supposed to be done by the stockyards employees. A portion of the pens contain water

troughs. (Tr. 156). Some of the hog pens have no water but all of the sheep pens are supposed to have. In the holding pens for cattle there are feed racks. The cattle holding pens are open but those for hogs and sheep are covered. The unloading chutes merely have space for temporary holding quarters with no water facilities except a sprinkler system which protects against heat in hot weather. I have never seen any water troughs and the animals cannot drink unless they drink off the floor. The unloading chutes are not covered but the holding pens for hogs and sheep are covered. (Tr. 157). The unloading chute is small compared to a lot of holding pens. The holding pens are made for care of live stock. Chutes are merely places for loading and unloading live stock. The unloading chute could hold a single deck of any class of live stock, but not more than a [fol. 233] single deck. The holding pens will hold from 8 hogs up to 400 or 500 hogs.

The reason for the variation in size of the holding pens is that often times odd lots of hogs are purchased by buyers which do not require the large amount of space occupied, and also truck hogs have to be taken care of and naturally smaller pens utilize less space. (Tr. 158). The holding pens are considerably larger as a rule than the unloading chutes.

After the animals are brought to the holding pen, our men report to the stockyards office and get information as to the location of the live stock which is posted on a bulletin. The key man for the Yards Company unlocks and delivers each pen of our stock to our man who takes it to the scale in the closest direction to our plant, where it is weighed. On Exhibit 18 there are two scales on the upper deck of the hog house know as C-4 and C-5 east of Laurel Street. (Tr. 159). Usually the hog scales are upstairs, and I think the sheep scales are also. The cattle scales are on the ground floor. The weighing is done by a stockyards man who punches a ticket showing the weight and counts the number of hogs. Our man drives the hogs to the edge of the yards where they are again counted by a stockyards employee. From there they are taken to our packing house. (Tr. 160). On Exhibit 18 the receiving pens for hogs are south of the extreme north line of tracks and between the second line of tracks and third line of tracks. The holding pens for cattle are between Exchange Avenue and the first line of

[fol. 234] tracks north of it. They are immediately south of the hog pens. The sheep pens are west of Laurel Street and south of the last line of tracks between Exchange Avenue and what is shown on Exhibit 18 as D-4. (Tr. 161). Practically everything is unloaded on the three east and west lines of tracks shown in the north right-hand corner of the map, except possibly at times there is unloading on the tracks running north and south parallel to Halsted Street. The pens in the lower half of the lower hight-hand quarter of Exhibit 18 are sales pens for cattle. The sales pens for hogs are on the second floor south of the north line of tracks between the two adjacent lines of tracks. (Tr. 162). Sales pens are used for sales purposes only.

The sale is made in the following manner: The buyers are approached by commission men who ask what kind of stock they are looking for. Commission men look at the live stock and bid what they think the market value is. The Hygrade Company makes no sales on the Exchange. The commission men and yard traders are the only people who make sales. (Tr. 163). Yard traders are speculators who operate trying to make a margin on live stock. I do not know of any packer ever selling live stock on the yards. Usually stock is received during the night and delivered to us the following morning. We often hold stock over Saturday in the yards, but usually we take it a few hours after unloading. I do not believe the average delay would be over six hours the whole year around. (Tr. 164). I know of no case where we have had them held longer than two days. The [fol. 235] commission men and traders have particular parts of the yard assigned for their deliveries. (Tr. 165). Particular sections are allotted to designated commission firms to hold their sales. We have no allotted pens and I know of no other packer who does. Hogs are sometimes put into these assigned pens when consigned to the man who has the pens. Sheep are delivered directly to assigned pens. Cattle are handled like hogs, but they usually try to get them into the proper quarters. (Tr. 166). Sometimes the commission men have their own men at the chute in order to get their stock into the pens as quickly as possible, but if they do not have their men there, the Stock Yards Company puts the animals to the assigned holding pen. That would not be so in the case of hogs, but would be in the case of sheep and sometimes in the case of cattle. (Tr.

167). When cattle are delivered at the unloading chutes, it is necessary to drive the animals about half a mile to the pens assigned to commission men.

Exam. Smith: Now, let's see, is there any allegation of discrimination or prejudice as between you and the commission men?

Mr. Curran: No. sir; but we are indicating the service which is rendered the commission men which we do not receive and do not want.

Exam. Smith: Well, I am going to listen to it for a little while longer, but I do not see where this goes. The Stock Yards are over there, and it offers a certain service and performs a certain service. You say you do not want the services, and if you get them you want them free.

I have gotten that much out of it, and it does not make any difference to my mind—I may be all wrong as to the layout of the Stock Yards; unless you show it is absolutely inefficient.

They are out there and they say they serve you and they [fol. 236] say they serve others in the same way. Now, I do not care how those tracks lay. I have not seen any reason why I should be bothered whether they run east and west or north and south. (Tr. 168). They get cattle out of the cars some way, and they handle them and ultimately you get your cattle. The commission man gets his cattle. The other sale traders get their cattle.

I cannot see that this goes anywhere at all. I may be altogether wrong. I frequently am.

Mr. Curran: Well, I would like to make this statement for the record, and that is that the basis of our complaint is that the service which the Stock Yards Company renders for us is a service of delivery which is part of the transportation service, and that is all we want and all we require.

Now, the Stock Yards undertakes to do more than that in the case of some of its patrons, and sometimes it does more than that for us. As to these other patrons and ourselves, when we buy on the Yard we have no complaint to make of the Stock Yards charge. The purpose of this testimony was to show what this other service was as to which we make no complaint, for the purpose of distinguishing out situation in which we require one delivery. I think, however, I have covered all I wanted to cover in this presentation of it.

The Witness: The time required to drive live stock from the yards (Tr. 169) into our plant varies with the location of the live stock when we receive it from the Yards Company. It ranges between an hour and three-quarters to [fol. 237] carry a load across. We take three to five loads at one drive. They are taken over an overhead viaduct leading into the packing house and down through the subway where the river used to be. The time I have given is from the storage pens to our plant and varies from three-quarters of an hour to an hour or sometimes longer on hogs. That is the average per carload. (Tr. 170). We ordinarily drive five carloads over at a time but we only maintain three men to drive them. The time I speak of is from the time the stock is weighed to us to the packing house. The stock is counted three times. (Tr. 171).

We can tell whether the death or crippling of animals occurred prior to unloading because the Yards Company gives us a notice from their record. The men unloading furnish it, showing live stock crippled or dead in the cars. If the crippling occurs afterwards we get notice from the same source. The Yards Company notifies us that the stock is crippled when unloading or crippled in the chutes.

In case of a double deck of hogs, we have two weighings, one from each deck. (Tr. 172). Occasionally on cattle we have two weighings on one carload, but that happens very seldom in the case of consigned shipments. In the case of animals handled by commission men and traders, it frequently happens there is more than one weighing which is due to the fact that one carload may be sold to three or four men. This is done about 75 to 80 per cent of the time. That does not happen in our case except where the carload is [fol. 238] split as between upper and lower decks. Tr. 173).

Cross-examination.

Both sides of a receiving pen will hold a double deck, a deck in each side. It would be a disadvantage to me in the summer time not to have water in the unloading pens if I kept animals in those pens. (Tr. 174). We have kept stock in there for two or three hours with a spray over them before loading. In the case of unloading we have had times when the stock stayed there for an hour and a quarter, but I would not say that was frequent. I do not know that in the mornings stock cannot be kept in the unloading pens more

than two minutes. I know it takes longer than that to get them out of the pen. (Tr. 175). I would judge that from the farthest pen where we might receive cattle to our packing house would be a mile and a quarter. From the nearest pen it would be a half mile or three-quarters of a mile. Both the unloading pens and storage pens have cement or brick floors. The unloading pens are equipped with sprays. (Tr. 176). There are times when watering troughs are necessary in the unloading pens due to the slow movement of the stock. It would cause too much confusion if every one undertook to yard his stock to get them to water. The Stock Yards Company has to do it to avoid confusion. It would [fol. 239] be preferable to have water in the unloading pens to save the live stock from heat. (Tr. 177).

Benjamin B. Greer was thereupon called as a witness for complainant, and being duly sworn testified as follows:

I have had twenty-six years railroad experience with the Great Northern, Chicago, Burlington & Quincy, Chicago, Milwaukee, St. Paul & Pacific, and United States Railroad Administration. I was manager of the Milwaukee during the Railroad Administration and Vice President in charge of operations for the last five years up to 1925. In 1917 I was Vice President and General Manager of the Colorado & Southern. I was Superintendent, Assistant General Manager and Assistant to the Operating Vice President of the Burlington (Tr. 178) and had various positions in the Operating Department of the Great Northern. I became generally familiar with railroad operating problems in the Chicago Switching District, which is the District that constitutes Chicago delivery on freight for railroads entering Chicago. Since 1925, I was President of the New York Air Brake Company and kept in touch with the railroad situation. I have made certain examinations as to trackage and operating conditions in connections with this case.

[fol. 240] In connection with my experience, I became familiar with railroad operating problems within the Chicago switching district. The Chicago switching district is the district that constitutes Chicago delivery for freight for railroads entering Chicago.

Since 1925, I was President of the New York Air Brake Company, which makes airbrakes for railroads, and during

that period I kept in touch generally with the railroad situation.

I made certain examinations as to trackage and operating conditions in connection with this case. (Tr. 179). I examined the situation as to deliveries at the Hygrade plant and at the plant of the Omaha Packing Company. At the Omaha Company plant they have two unloading tracks with a platform between. The tracks hold about eleven cars apiece. It is a very nice layout. The situation at the Hygrade Company plant is as has been described here in the previous testimony and exhibits. (Tr. 180). I saw the track layout as it is shown in the exhibits which have been presented. At the Omaha Company plant the operation is simple enough after the Burlington gets to the plant with their transfers. They run through the congested territory in the so-called lumber district and have quite a operating problem to get down there and back. There are a lot of grade crossings. (Tr. 181). I am referring to the operation from the Burlington yard to the Omaha Packing Company plant. I found that the operating problems are not of the best either at the Hygrade or the Omaha plant. One is as bad as another. I think there would be no difference. The only difference in operating problems at the two plants would be that at the Omaha Packing plant the tail track room is longer and the operation consists of shoving cars right into the plant. (Tr. 182). At the Hygrade plant cars have to be pulled by the switch and shoved in from the tail track. It is not quite as simple as the Omaha plant situation but is not unsurmountable and is not unusual in Chicago. I am sure it exists in many cases in the Chicago District but cannot give you specific instances.

[fol. 241] Cross-examination.

When I say that cars would have to be pulled at the switch point, I mean that cars would have to be pulled in an easterly direction to Morgan Street and shoved in. They would have to be pulled in an easterly direction and pushed backward, westerly and southerly, down on the two tracks to the rest of the plant layout. It would be a double operation instead of a single operation. (Tr. 183.) I am talking about the two tracks 452 feet long. I do not understand that the track down past the power house is under consideration, but get-

ting into it would be quite a complicated operation. I would think it was almost impossible. (Tr. 184.) I have seen a great deal of the operation of live stock into Chicago. I was with the Chicago, Milwaukee, St. Paul & Pacific for six years and with the Chicago, Burlington & Quincy for nine years. I spent perhaps five years in Chicago. I was probably out to the stockyards district a dozen times in ten years. (Tr. 185) for purposes of general inspection of our operation. I have not gone over the tracks of the Chicago Junction in the stockyards district thoroughly, but I know in a general way what the layout is. It is very congested during the stock period, during the morning hours. (Tr. 186.) The Milwaukee handles stock direct to the unloading chutes with its own power and crews. We leave our rails at Franklin Park and operate over the Indiana Harbor to the Chicago [fol. 242] Junction and then over the Chicago Junction into the stockyards. I have been at the stockyards in the early morning hours when trains were coming in, and do not believe I have ever seen anything more congested during my experience at Chicago. (Tr. 187.) If a train had stopped before it got to the unloading chutes to set out some cars, it would have been quite a serious matter, as it would have delayed everything behind it. Sometimes we brought trains in on very short time under the 28-Hour Law. Had those trains stopped to set out cars, we might have violated the law and subjected ourselves to heavy penalties. All railroads make an effort to observe the law. (Tr. 188.) I have been over the tracks of the Chicago Junction in the locality of the Hygrade plant and the unloading tracks in the last month. On Exhibit 1, I observe the unloading tracks between the pens at the Hygrade plant. Exhibit 1 does not show all of the tracks. It is not large enough to show how the Milwaukee would bring trains into the Union Stock Yards as it does not cover the Indiana Harbor Belt Line which would be off to the left of the map. (Tr. 189.) I think we would come on to the map from the Indiana Harbor Belt in the lower left-hand corner. From a point six or eight miles from the stockyards the traffic goes through a very congested district, and any stops to switch out cars in the early morning hours would delay a great many trains under ordinary circumstance. That, I admit, would be a very serious matter.

[fol. 243] Redirect-examination.

(Tr. 190.) In my opinion, live stock would not be delivered to the Hygrade plant in the manner I have just described from the point of view of good operating practice.

I assume that stock for the Hygrade plant would be handled in transfers the same as stock for the Omaha Packing Company is handled, and would not be handled in stock trains to the stockyards. Under the present operation the Hygrade Company's stock is handled in stock trains to the unloading chutes, and it would be a difficult matter to switch out those individual cars. But the Hygrade Company's stock comes in in bunches in time freight trains; it does not come in in what we call pick-up stock trains. If that stock was not brought in in regular stock trains that go to the yards, there would have to be special runs which possibly would add to the congestion if it came in with the rest of the stock in the morning. (Tr. 191.) There is not as much of it as there is of the Omaha Packing Company stock, so the difficulties would not be as great. If three or four other packers in the same vicinity demanded the same service, that would be quite a problem. On the Milwaukee Railroad, if a live stock train came into the Bensonville yard with eight or ten cars for the Hygrade Company, those cars would have to be switched out. (Tr. 192.) The time this would take would depend on where the cars were. They are generally bunched. They come from one primary market to Chicago as a general proposition. If they are not bunched, they would have to be switched out the same as dead freight has to be switched out now for the Omaha plant. That all has to be switched out when delivered the same as we are talking about this stock. It would not be unreasonable to assume a half-hour delay in switching the trains. (Tr. 193.) It would depend on the length of the train, but ordinary stock trains on the Milwaukee have 80 or 90 cars of stock.

[fol. 244] After the cars were switched out they would be handled by transfer to the Chicago Junction and would be delivered at whatever yard the Chicago Junction said. Our engine would not take the cars to the Hygrade plant, as the Chicago Junction would be the terminal switching road. (Tr. 194.) The Chicago Junction would have to have an engine at the interchange yard to place the cars at the Hygrade

plant. That would all consume time. The operation would be entirely the same as on the Burlington Railroad to the Omaha plant. With respect to comparative congestion, there is a great deal of congestion at the Burlington yard at Western Avenue in the morning. That is where the Omaha stock is received by the Burlington from other roads. I do not believe the Milwaukee Railroad has any connection with the Chicago Junction other than through the Indiana Harbor Belt. (Tr. 195.) The Milwaukee has some trackage rights over the Pan-Handle that they could come there on but I do not believe there is any direct connection. I do not know whether the Pan-Handle route is used for taking live stock to the stockyards. It would probably be more congested than the Indiana Harbor Belt. Stock over that line would be handled from Western Avenue and would not go into Bensonville. (Tr. 196.) Stock from the Council Bluffs Division would go to Bensonville and would have to be pulled to a point east of Western Avenue and then back on the Pan-Handle tracks. We would have to do that or run [fol. 245] through the Union Station which we would not do very well. Live stock is a highly perishable commodity and it is desirable to get it off the rails as soon as possible. Dead freight can stand more than live stock (Tr. 197) but railroads now-a-days are trying to handle all traffic with the least possible delay. There is no criminal liability for delaying dead freight. The operating difficulties which have been brought out would exist on deliveries made to the Omaha plant, with variations in degree or kind. The same delays which I have mentioned are liable to occur at Western Avenue where the Milwaukee would deliver to the Burlington for delivery to the Omaha plant. Deliveries have been made to the Omaha plant as long as I can remember. (Tr. 198.)

Chicago, Illinois, December 22, 1931.

Leo S. Joseph was thereupon called as a witness for complainant, and being duly sworn testified as follows:

I am General Manager of the Hygrade Company, Chicago division, and supervise the sales in the Chicago district. I have become acquainted with the trade practices of the

Omaha Packing Company in Chicago. (Tr. 201.) Competition in sales exists between the Hygrade Company and the Omaha Company in that their salesmen cover the same sections of the City, and call on the same customers trying to sell the merchandise. We sell the same general class of meat products that the Omaha Company sells. A few of those products are smoked meats, fresh pork, lard, cooked specialties, and items of that description. (Tr. 202.)

[fol. 246] Cross-examination.

The Omaha Company is not the only company with which we compete. There is general competition here among all the packers. (Tr. 202.)

WILLIAM D. ADAMS, witness for complainant, having previously testified, was recalled and testified as follows:

Mr. Connell asked this morning that I furnish certain information relating to our Exhibit 16. That exhibit was a letter from Mr. Wheeler, Freight Claim Agent of the Union Stockyards, stating that one hog had been unloaded dead, and 7 hogs had been delivered crippled to us. The letter also stated that he enclosed an unloading certificate which was not furnished. I have the certificate here, and we can furnish photostatic copies within ten days if such copies are desired. (Tr. 203). The unloading certificate only shows the condition of the hogs when they were unloaded, not when they were delivered. [There was no request for copies.]

I was also requested to furnish a copy of four written instructions covering the billing of those hogs into Chicago. I have a mimeographed letter which we sent out on September 15th. The instructions prior to that were verbal.

Cross-examination.

The letter was sent out on September 15, 1930. (Tr. 204.) It relates to the shipments on Exhibit 13. Three shipments on Exhibit 13 were made after the date of the letter. The rest moved on verbal instructions. Apparently the shippers of those cars considered that "Union Stock-

yards" meant the same as Union Stockyards & Transit Company. That is the general understanding in the country. (Tr. 205.)

Exam. Smith: There is no necessity for filing the letter of September 15, 1930.

[fol. 247] Re Direct Examination.

The two tracks on our property used for storage purposes are leased at this time to the Mather Stock Car Company, which stores its cars there, doing light repairs and occasional painting jobs. Our cars are not stored there.

Re Cross-Examination.

Those tracks have been leased to the Mather Stock Car Company since January, 1931. They were not leased prior to that date but were vacant. (Tr. 206.)

Mr. Curran: I desire to introduce a certified copy of the charter of the Union Stockyards & Transit Company, which is certified upon a photostatic copy. It is almost illegible, and for that reason we went to the Session Laws of Illinois, for (Tr. 206) 1865, and found this in printed form. Copies of this Exhibit have been compared with the Session Laws, and it correctly represents what the charter would show if it were legible. For that reason I ask that the certified copy be accepted in evidence, and that the mimeographed copy be also accepted for the convenience of the Commission.

Exam. Smith: Is there any objection?

Mr. Towner: No objection. I do not know what it has to do with the case, but I will not take up any time with an objection.

Exam. Smith: The photostat will be Complainant's Exhibit Number 20 and the mimeographed copy, Number 21. There is nothing in Exhibit Number 21 that is not in Exhibit Number 20, is there?

Mr. Curran: Exhibit Number 21 is exactly the same as Exhibit Number 20.

(Said documents were thereupon received in evidence as Complainant's Exhibits 20 and 21 and are certified to this court.)

(Tr. 207.) Complainant rests.

[fol. 248] O. T. HENKLE was thereupon called as a witness for defendants, and being duly sworn testified as follows:

I live in Chicago and am Vice President and General Manager of The Union Stock Yard & Transit Company. I have direction of the operation of the property. I have been with the Company for 28 years and have been General Manager for about 15 years. I am familiar with the issues in this case. (Tr. 208.) The property of the Stock Yards Company is west of Halsted Street and between 35th Street and 47th Street, in Chicago. It has been occupied by the Yards Company for stockyards purposes since the organization of the Company. A history of the Stock Yards Company is given in the decision of the Supreme Court at 226 U. S. 286 and in the report of the Interstate Commerce Commission in the loading and unloading charge case, 52 I. C. C. 209. The Company started business under a special charter of the Legislature of Illinois dated February 13, 1865, the charter being issued to the present Company. Exhibits 20 and 21 are copies of the charter that was originally issued and is the present charter of the Company. (Tr. 209.) When the Company was incorporated, subscriptions were taken for $1,000,000 worth of stock of which $925,000 was subscribed by nine trunk line railroads reaching Chicago. Subsequently these railroads sold the stock in the open market, and for about 50 years no trunk line railroad has had any ownership interest in the Yards Company or control over its affairs.

As appears from the reports of the Supreme Court and the Commission, the Yards Company, under its charter, first constructed not only a stock yards but also a railroad. [fol. 249] This railroad was leased in 1897 for a term of 50 years to the Chicago & Indiana State Line Company. Under this lease the Yards Company received, as lessor of the railroad property owned by it, two-thirds of the profits derived by the lessee from the operation of the railroad. This lease was in effect at the time of the decision of the Supreme Court. After that decision the form of the lease was changed and the railroad property owned by the Yards Company was leased to the Chicago Junction Railway Company in perpetuity for a rental of $600,000 a year. This was the lease in effect at the time of the decision in 52 I. C. C. Since then the Yards Company's position has

been substantially changed. Under authority of the Commission granted in 71 I. C. C. 631 (Tr. 210) the railroad property owned by the Stock Yards Company and operated by the Chicago Junction Railway was, with the consent of the Yards Company, leased by the Chicago Junction Railway Company to the Chicago River & Indiana Railroad for 99 years and the stock of the Chicago River & Indiana Railroad was purchased by the New York Central Railroad. The lease to the Chicago River & Indiana also contained an option to extend the lease in perpetuity. Since this arrangement went into effect the Yards Company has been entirely divorced from any company engaged in the operation of a railroad. At the present time the stock of the Yards Company and of the Chicago Junction Railway is largely held by a holding company organized under the laws of New Jersey. The Yards Company still owns the railroad property formerly operated by the Chicago Junction, and the Chicago Junction is the lessor of that prop-
[fol. 250] erty to the Chicago River & Indiana. But neither the Yards Company, the Chicago Junction nor the holding company are operating a railroad or have any connection therewith or control thereover, directly or indirectly.

The only present activity of the Stock Yards Company is that of furnishing a loading, unloading, and stockyards service in connection with the shipping, receipt and delivery of live stock. Its activities with respect to live stock fall into two distinct categories. The first activity is loading and unloading live stock for the railroads which haul such stock to and from the stock yards. (Tr. 211.) From 1867 until the decision in 226 U. S. 286, this charge was 50 cents a car for loading and 25 cents a car for unloading, and was not published in any tariff filed by the Yards Company with anybody. It was paid to the Yards Company by the railroads. In the decision referred to, the Supreme Court held that the Stock Yards Company was a common carrier and thereafter its loading and unloading charges were incorporated in tariffs filed by the Yards Company with the Interstate Commerce Commission but were not changed in amount. In 1917 these charges were increased by 25 cents, which led to the Loading and Unloading Charge Cases before the Commission reported at 52 I. C. C. 209 and 58 I. C. C. 164. Afterwards they were increased to $1 per car for loading and unloading under authority

granted at 61 I. C. C. 223. They have remained at that figure ever since, and since the decision of the Supreme Court have been contained in tariffs filed with the Interstate Commerce Commission.

I wish to offer a copy of our current loading and unload- [fol. 251] ing charge tariff. (Tr. 212.)

(Said document was thereupon received in evidence as Defendants' Exhibit 22 and is certified to this court.)

Except for the period from May, 1917 to March 1, 1920, the loading and unloading charges of the Yards Company have always been paid by the line-haul railroads hauling live stock to and from the yards and the services performed by the Stock Yards Company for this money is entirely separate from any other service performed by it.

In 1930 the Stock Yards Company unloaded for 23 railroads 204,828 cars containing more than 14,000,000 animals and loaded out 48,501 cars. Practically all of these cars were brought to the Stock Yards Company chutes in train lots, some trains having as many as 70 cars. These cars are brought to the unloading platforms of the Stock Yards Company by the engines and crews of the line-haul carriers and the crews remain until the live stock is unloaded and then take the empty cars immediately back to their lines. It is imperative that empties be immediately removed in order to prevent congestion which would greatly delay the entire movement.

The Stock Yards Company has facilities for setting 350 (Tr. 213) cars at one time with two chutes to each car length. The first train arriving is unloaded into the odd numbered chutes and as soon as the empty train is removed another train can be set at the same platform and unloaded into the even numbered chutes and while this latter process is going on, the Stock Yards employees are removing from the odd numbered chutes the animals from the preceding train, which makes the process practically continuous.

The complaint in this case relates to shipments consigned to the Yards and the actual work done in unloading live stock at the yards may be described as follows: On arrival of a train of live stock at the chutes, the employees of the Stock Yards Company immediately start unloading the animals into the chute pens. The train crew

[fol. 252] remains at the platforms while the animals are being unloaded and take the cars back to their own lines as soon as empty. The Stock Yards employees on the platforms, or unloading chutes, must make records of the cars from which they are driven. While this is being done the conductor takes the waybills to the Receiving Office, where clerks prepare bulletins, which are publicly posted, to notify the consignees, who in most cases are the commission firms or other selling organizations. At the same time the original records are started and passed along to the Yardmasters, who continue the records, showing the disposition of the animals. Record must be kept of the dead or crippled animals, both the railroad and (Tr. 214) the shipper looking to the Stock Yards Company as their neutral representative to protect their interests. Other records must be made from which the freights may be collected, one of the services performed by the Stock Yards Company being the collection and guarantee of the railroad freight or other charges of the railroad company. If the consignees are not on hand to receive the animals on arrival, the Stock Yards Company removes them from the unloading chutes to other pens, where they are locked up and held until called for by the consignee. The service of unloading stock thus performed by the Yards Company definitely terminates when the animals are put into the chute pens. No other service is performed by the Yards Company for the unloading charge paid to it by the railroads. Consignees may take delivery of animals at the chute pens if they so desire, but if this is done it must be done almost simultaneously with the unloading of animals into the chute pens. This immediate removal of animals from the chute pens is absolutely necessary in order to preserve an even flow of live stock from the cars into the yards. If the consignees are not present to take delivery of animals consigned to them immediately upon their placement in the chute pens, they are removed from the chute pens to other pens by employees of the Yards Company.

[fol. 253] I heard the testimony here yesterday from which it might be concluded that these chute pens, which are the pens into which the animals are put (Tr. 215) immediately upon being unloaded, are used to some extent as storage pens. As to what extent this is so, it is not so

during the night, and during the run of the live stock, but when the last train comes in, they may remain for some little time in the chute. They might remain there for four or five hours, but that is not usual. These chute pens are not intended for storage pens. And during the run—that is to say while the trains are coming in—it is not possible for animals to be stored in the chute pens for any time whatever. We remove them as quickly as possible.

One feature in the operation of a Stock Yards which adds greatly to the general expense is the fact that live stock does not arrive at the Yards in an even stream. The largest supply reaches the Yards on Sunday nights and Monday mornings, the number of cars during this period (Tr. 216) having reached as high as 3,228 cars. We have also received in one day 122,749 hogs; on another day 71,792 sheep and on still another day 49,128 cattle. The supply on Tuesdays and Wednesdays is usually very much lighter than Monday with Thursdays somewhat better than Tuesday or Wednesday, with very light receipts on Friday and practically no receipts on Saturday. The Stock Yards Company must be prepared to handle the live stock as it arrives, in whatever quantity, efficiently and with dispatch. They must keep a suitable force on duty at all hours during the day and night. Watchmen must be on duty at all hours all over the property. Police must be provided to protect the property and keep order. It is greatly to the advantage of all concerned, the producers, the railroads, the selling agencies, the packers, and the consumers, to have all of these activities centered in one place such as the Union Stock Yards so that the Stock Yards Company by functioning for all of these interests may balance up the work to the best advantage. In the report of the Com- [fol. 254] mission in the Chicago Junction Case, 71 I. C. C. 631, it was said that all parties agreed that this was the only practical method of handling the live stock traffic and this is correct.

The second activity of the Yards Company entirely separate and distinct from its activities in unloading or loading live stock, is that of furnishing a stock yards service to shippers and consignees of live stock. The Yards Company is a stock yards (Tr. 217) under the Packers & Stock Yards Act of 1921 and is posted by the Secretary of Agriculture as such. As such a stock yards it performs the service of furnishing facilities at the yards in connection

with the receiving, buying, selling, marketing, feeding, watering, hauling, delivery, shipment, weighing or handling of live stock in interstate commerce. Its charges for these services are filed by it with the Secretary of Agriculture as required by the Packers and Stock Yards Act. I wish to offer at this time as an exhibit a copy of our current tariff filed with the Secretary of Agriculture, together with four amendments thereto.

(Said document was thereupon received in evidence as Defendant's Exhibit 23, and is certified to this court.)

Ever since the effective date of the Packers and Stock Yards Act, the Secretary of Agriculture has exercised a continuous jurisdiction over the Yards Company. Voluminous hearings were held over a period of years and a number of reports were issued. The case is still pending undisposed of and hearings may be resumed at any time. All of the charges for Stock Yards services, contained in our tariff filed (Tr. 218) with the Secretary of Agriculture, are involved in this proceeding and all of the services performed by the Yards Company are being investigated with the single exception of the unloading service, as I have described it, and the loading service. None of the charges filed with the Secretary may be raised or lowered [fol. 255] except with his permission and approval. Generally speaking, this stock yards service consists of caring for animals, feeding and watering them, driving them when necessary, furnishing proper and sufficient pens in which they may be kept, furnishing weights and scales and performing a variety of other services incidental to the proper care of such animals. It includes in fact all of the services performed by the Yards Company except those heretofore described as constituting the unloading service and the service of loading live stock. Thus, a service additional to the unloading service is performed by the Yards Company, even on live stock of which possession is taken by consignees immediately upon unloading and while the stock is in the chute pens. Such animals must be driven across property of the Yards Company, there being no other way of getting the animals from the chute pens to a location outside of the yards. On all animals of which the consignee does not take possession while they are in the chute pens, a yardage service is also performed. As explained, these

animals must be removed almost immediately to other pens and are there held for sale, and during this time they receive the stockyard services which I have mentioned. (Tr. 219.)

After delivery of the live stock to the commission men or other selling organizations, the animals are, by these selling agencies, prepared for sale in such manner as it is deemed will bring the most satisfactory results. When the animals are sold they are brought to the scales, where they are weighed by the employees of the Stock Yards Company in the presence of the buyer and seller, and a weight ticket, in quadruplicate, is made with what is known as a "self-registering beam," in order that every possibility of error may be eliminated. One copy of the ticket is provided for the buyer; one for the seller, and two retained for record. Fifty scales must be manned, properly maintained and frequently inspected. While this large [fol. 256] force must be ready to weigh promptly any animals brought to the scales, there are many days when the average work done at each scale is very light; still they must be always ready, and this is a serious expense in connection with the weighing. As soon as the animals are weighed, employees of the Stock Yards Company drive them from the scales to suitable holding pens, where they are held awaiting the disposition of the purchaser, and when the purchaser arrives, delivery is made to him by a Stock Yards employee. If the animals are purchased for shipment, the Stock Yards employees drive them to the Shipping Division and again act as Agent of the railroad companies in loading the animals from the chutes into the cars. To perform all this service requires an organization and facilities which are very complete. (Tr. 220.) The organization must be prepared to function at all hours and must always be maintained at a point which will enable it to take care of the maximum amount of business. Handling stock in this fashion, both as to loading and unloading service and the yards service, is the only thing that renders practical the receipt, sale and delivery in the Chicago market of the animals that are handled there daily. The Chicago market is now and for many years has been the largest and most important live stock market in the world. It has reached this development only because live stock deliveries are concentrated and are handled

in the manner which I have outlined. This method of handling has also enabled substantial economies to be put into operation in other directions.

An important function of the Stock Yards Company is in connection with the furnishing of weights on which the railroads base their freight charges and on which the consignees and selling agencies make account sales and returns to the consignors. For almost half a century after the opening of the Yards these weights were secured by [fol. 257] weighing the loaded cars and thereafter returning the empties to the railroad track scales; the weights were then telephoned or telegraphed back to the various railroad offices.

About fifteen years ago the railroads formed a Joint Agency and arrangements were made by which the actual hoof weights are furnished by the sales agencies and on this weight the freight (Tr. 221) is based, the method being as follows: the live stock train conductors deliver their waybills to the Stock Yards Company; from these bills, as heretofore stated, the bulletins are made up and posted, advising the consignees of arrivals. The waybills are then taken from the Stock Yards Company's Receiving Office to the office of the Joint Agency, where the waybill and the stub are numbered so that they may be readily matched up when they are later returned to the Joint Agency. The Joint Agency rate clerks check the rates and the minimum weights; and the number of animals, in accordance with the count furnished by the Stock Yards Company, is placed on the stub and waybill. The stubs are then separated from the waybills and distributed to the various commission firms and sales agencies, who insert the actual hoof weights as ascertained from the Stock Yards Company's scales. The stubs are than returned to the Joint Agency and matched up with the original waybills. Here the extensions are checked and the bills are refigured where the actual weights are in excess of the minimum and the stub is once more checked with the waybill to see that they agree. The waybills are then kept in the Joint Agency and the necessary records made from them, a statement being prepared showing the amount due all the railroads and this statement and the stubs are sent to the Stock Yards Company for collection.

For a long time the railroads did not (Tr. 222) get their weights in this fashion, but got them themselves before

the stock came over to the yards, and then when the car was made empty, they took the car back and weighed it light, [fol. 258] then deducted the one weight from the other, and in that fashion got the weight of the animals. As to whether that was a very cumbersome, slow, and unsatisfactory method of getting the weights, as I understand it the railroad men were handicapped by having to take these cars back to a particular place, or a particular scale, and then there was not only that difficulty, but there was the delay in some of the cars missing the scales, in getting the weights, and at times they had to take the tare on the cars anyhow. So that it was at best an unsatisfactory process not only for the railroads, but also for the consignees. The present method of ascertaining the weights was put in, I assume, as an economy measure, and as a more efficient way of doing what the railroads were able to do on their own scales. As to whether at the present time the old antiquated methods (Tr. 223) of getting the weights could be restored if it became necessary, I imagine this could be done only over the dead bodies of the terminal superintendents. I have an idea that the consignees and the people who depend upon the stockyard weights, and the people who pay the freight charges might also have some objection to it. The present method of securing the weights has been satisfactory to everybody. The present method is actual hoof weights, taken by an independent party, to wit, the Stock Yards Company.

The consignees habitually receiving stock at the Yards furnish a bond to the Stock Yards Company guaranteeing the payment of the freight bills of the railroad company to the Stock Yards Company. This enables the Stock Yards Company to pass all stock immediately along into trade channels. The volume of these freight transactions is indicated (Tr. 224) by the high spot in 1918 when the Stock Yards Company gave to the railroad administration a check for $985,323.27 for stock freights for one week.

In my opinion that is also a substantial advantage to the [fol. 259] consignees who are obligated to pay the freight charges, for the reason, of course, that they do not have to deal with individual railroads. This method of handling the freight charges permits them to deal with one party, being a party located conveniently to their places of business.

The Western Weighing Association representing the railroads has its representatives at the receiving platforms throughout the Yards checking and reporting on the condition of animals on arrival, weights and other details as instructed by the railroads. The Stock Yards Company's fifty scales are inspected regularly by its own experts under the direction of and in accordance with the rules laid down by the Secretary of Agriculture and the scales are independently inspected by the City at regular intervals.

The U. S. Government inspects all the arrivals so that any (Tr. 225) diseased animals in the receipts may be segregated and given further inspection when necessary.

As a result of the methods of handling live stock which have obtained in Chicago for the last fifty years, an essential speed in handling the traffic has been developed. This speed is necessary if congestion and delays are to be avoided. It permits the handling of live stock in trainload lots, which could not possibly be done if deliveries were scattered. It permits the making of necessary records without delay or damage to the stock itself and has proven eminently satisfactory to everybody and must be conceded to be the only practical method of taking care of the volume of live stock traffic which moves to and from Chicago every day. The system of handling has been developed over a long period of years and improvements have been constantly made as experience dictated their desirability or necessity. This entire structure would be torn down by any requirement that live stock deliveries in the congested areas of the Chicago Yards should be made [fol. 260] in any other fashion. It would in effect be a reversion to practices which obtained from 25 to 50 years ago, but which have long since been outgrown.

I have also had prepared from the records of the Yards Company a statement of all shipments arriving at the yards consigned to the Hygrade Company during the year ending with the month of September, 1931, which I desire to offer as an exhibit. This exhibit contains all pertinent information with respect (Tr. 226) to each shipment and is self-explanatory.

Mr. Curran: The information contained in this exhibit appears to be information with respect to particular shipments from particular points to the Hygrade Company at its plant at Chicago. We expect to establish, I think we

have established, that the Chicago Union Stock Yards is a common carrier subject to the Act and if it is so subject, this information is unlawfully given publicity. I object to the exhibit on that ground.

Mr. Towner: I have one obvious answer, Mr. Examiner, and that is that the Stock Yards Company is not a common carrier (Tr. 227).

Mr. Curran: If the exhibit is accepted, then I object to passing out any of these exhibits to strangers, and request that the exhibits be kept in the Commission's file until the question is determined as to whether it is relevant or not (Tr. 228).

Mr. Towner: I will withdraw the exhibit at this time and file a restatement of the material in it within ten days. I will undertake to eliminate from such restatement all of the material that could possibly be objectionable under the Act.

Mr. Curran: I have no objection to that.

Exam. Smith: Exhibit No. 24 is hereby withdrawn, and a substitute constructed as indicated will be furnished (Tr. 229) to the Commission within ten days.

[fol. 261] Mr. Towner: And I might add this, too, that the substituted exhibit will be based entirely on the information contained in the exhibit which Mr. Henkle has identified.

Mr. Curran: And may I point out one thing on the exhibit in the last column I noticed that you showed some of these cars yarded, and others delivered. Now when you prepare your new exhibit, will you explain what you mean by those two terms?

Exam. Smith: Well, I think perhaps Mr. Henkle could explain that right now. (Tr. 230.)

The Witness: By the term "yardage" as shown on that exhibit I mean that employees of the Stock Yards Company have removed the animals from the chute pens in all cases where it said "yarded." In the case of those cars after which appears the word "delivered" it means that the employees of the Hygrade Corporation themselves took delivery of the animals directly from the unloading chutes. That is all it means.

Assuming a delivery of stock inbound to the Hygrade Company at the unloading chute, the length of the drive from such point to the plant of the Hygrade Company is

not over 450 feet. The longest drive would be less than half a mile. That would not apply to animals that were yarded as I have described, but I am speaking of hogs only. Cattle might be further away, but it is not likely that they would be. (Tr. 231) The maximum would be greater and the average would be greater because they might take them from some scale at a remote part of the yards. But the minimum would be about the same. There would be no difference in the case of other animals. (Tr. 232)

I heard the testimony yesterday with respect to the making of claims against the railroads and the payment of them by the railroads. As to whether, after animals have been yarded by the Yards Company, that is to say, after the unloading service has been finished and completed, an injury occurs, the Yards Company ever receives claims for such [fol. 262] injuries: It depends upon conditions. Sometimes we receive them, and sometimes the railroads receive them. As a matter of fact though the Yards Company has received many such claims, and we have paid many of them. And we have successfully defended many of them. It is not correct to say that in every instance the railroad company assumes liability for loss and damage to animals until they are actually out of the Stock Yards. (Tr. 233.) As a general proposition it is true that the liability of the railroad company is confined to the unloading of the animal.

Cross-examination.

The yardage charge is the same on all deliveries at the Union Stock Yards, whether the consignee takes immediate possession or leaves the stock at the yards for a considerable period. In other words, the charge is the same if immediate possession is taken, or if it stays there for two or three or four days, or a week, except that in the latter case it would be necessary to buy feed and perhaps bedding. That is in accordance with our tariff on file with the Secretary of Agriculture. There is no limitation upon the length of time the Hygrade Company is permitted to store the animals. (Tr. 234.) We have not imposed any limitation because it is the practice to clean up all the animals every day as nearly as possible, and nobody wants to keep them there any longer than they can avoid.

The unloading platform is not leased to the Chicago Junction Ry. It is owned by and in the possession of the

Stock Yards Company and that is also true of the unloading chutes. We do not consider the unloading chutes a suitable pen in which to keep animals for a considerable period of time. We consider it a suitable pen into which live stock is to be unloaded.

[fol. 263] Q. You have testified that as a practical matter it is necessary to move the live stock out of the unloading chutes into storage or holding pens in practically every instance except possibly toward the end of the incoming trainloads, at which time it is possible to keep live stock in the unloading chutes.

A. Yes, sir.

Q. Now also without regard to the tariff provisions, and with regard particularly to the management of the live stock at the (Tr. 235) Union Stock Yards, would you not say that it would be necessary to have holding pens in addition to the unloading chutes, in order to handle live stock for purposes of delivery?

A. If by holding pens you mean other pens into which the animals may be placed awaiting the arrival of the consignee, I would say, yes.

[fol. 264] Our pens are not leased to anybody. We retain possession of all pens at all times. As a matter of convenience we allot certain pens to some commission men but they are still under our lock and key and subject to our use at any time. We do that so a customer will know in what alley he may usually find his live stock. (Tr. 236.) We have particular locations in various parts of the yards that are specifically assigned for use by the packers, but they are still under our lock and key and available to us for use by any other patron. We make the assignment to all packers in the same way as we do to commission men. We never made one for the Hygrade Company because it picks its stock up wherever it happens to be. It can have a pen at any part of the yards that is necessary to collect the hogs in. We treat everybody exactly alike. (Tr. 237.) If the Hygrade Company asked for the assignment of pens, I think we would assign them, but I cannot be sure until I have looked into the detail of how they handle their hogs. I have never had any complaint from the Hygrade Company, and so far as I know they are satisfied with their arrangements in the yard. I do not recall any request for a special assignment of pens to the Hygrade Company.

Generally these assignments are made only to commission men. In some cases the Stock Yards Company pays dam-[fol. 265] age for injuries. (Tr. 238.) We would not pay claims arising after the consignee has taken charge of the animals but would if they are kept in particular pens and were injured as a result of negligence on the part of the Stock Yards Company. I would say we would not do that before delivery has been made to the consignee.

Not all of the packers served by the Yards make settlement of the freight charges with the Stock Yards Company. There are some exceptions by superintendents who have made special arrangements with the Railroad Joint Agency or the representatives of the railroads who are paying their freight charges direct.

Redirect-examination.

(Tr. 239.) If there was no necessity for taking animals out of the chute pens immediately after unloading, those pens could be used until delivery had been made. They are the same size. They do not contain water but that is because no water is wanted in the pens by consignees. The quick movement in and out of these pens is due to the fact that they must be vacated to make room for incoming stock. The pen itself is all right as a holding pen. Hogs can be fed but the pen is not intended for that. (Tr. 240.) We could feed hogs in the chute pens as well as the storage pens, as they are fed on the ground anyway. The consignees and shippers do not want water in the chute pens because if the hogs drank then they would not drink again just before they were sold and they would weigh heavier for freight purposes. Consignees do not want water in the [fol. 266] unloading or chute pens, and we only water animals at their direction.

Re-cross examination.

(Tr. 241). What I said about feeding on the ground does not apply to cattle or sheep.

E. L. Kemp was thereupon called as a witness for defendants, and being duly sworn testified as follows:

I am general agent of the railroads at the Union Stock Yards (Tr. 242). I have been in that position since August, 1918. I look after the handling of all freight con-

signed to industries within the stockyards and located on the Chicago Junction Railway and all freight originating at industries on the Chicago Junction, Chicago River & Indiana, Chicago Produce Terminal and the Potato Terminal. My duties include the collection of freight charges. I heard the testimony with respect to certain shipments of live stock that came into Chicago consigned to the Hygrade plant on the Chicago Junction. I think that occurred in September, 1930. In the particular conversation three cars were involved (Tr. 243). The Traffic Manager of the Hygrade Company directed that the cars be delivered to his plant in accordance with the billing. At that [fol. 267] time the cars had been unloaded in the chutes of the Stock Yard Company. He requested that they be delivered to the Hygrade tracks in accordance with the billing. I asked him "How about the charges?" and he said, "What charges?" I said "The charges in addition to the Chicago rate." He said there should not be any charges, and I told him that was where we differed. He said, "The bond should cover that." I told him we wanted an understanding as to what the charges were before we let loose of the stock, and that we wanted his assurance that he would pay the Chicago Junction switching charges of $12 before we would release the stock. He was very positive in saying that he could not see his way clear to do that. He declined to pay the Junction charges, and that ended the matter so far as I was concerned (Tr. 244). It was not necessary to tell him the delivery he requested would be made upon the payment of the charges, because I told him what I wanted him to do before I would order them delivered. Under appropriate tariff provision the prepayment of those switching charges of the Junction is required before delivery, and I also wanted to establish definitely that the charges would be paid without question. I was met with a definite refusal. The Chicago Junction tariff to which I referred is the one that was filed here. On the Chicago Junction they look to the party ordering delivery to pay the charges (Tr. 245). It is necessary for somebody [fol. 268] to provide the funds for the switching service. The Hygrade Company did not supply the charges.

WILLIAM J. O'BRIEN was thereupon called as a witness for defendants, and being duly sworn testified as follows:

I am General Manager of the Chicago Junction Railway Company and have been for about 14 years (Tr. 246). I have been connected with the railroad for 44 years, all of that time within the stockyards district. I am familiar with the conditions out there and with the plants.

I understand the complainant wants his live stock delivered in cars to his plant. I am quite sure my railroad had nothing to do with the stock consigned to the Hygrade plant, as Mr. Kemp stated the animals were unloaded at the Stock Yards Company when the question arose. I understand the rule and practice is that our charges have to be prepaid (Tr. 247). I think it is authorized in the Galligan Tariff. I understand the same rule applies generally on all switching lines in the Chicago district. I am familiar with the layout at the Hygrade plant. I think I saw it the last time within the last two or three months. An objection to delivering live stock to the Hygrade Company at its plant is that it has no unloading facilities. The track [fol. 269] was not constructed with the idea of providing live stock facilities but might be rearranged or made suitable for the purpose by spending money. Even if unloading facilities were furnished, such deliveries would still be objectionable (Tr. 248). It would be awkward, fruitful of delay, and more than usual expensive.

To explain how live stock is handled today into the Stock Yards, and how it would have to be handled if cars were delivered at the Hygrade plant: Today, the trains are hauled by the engines of the trunk lines direct to the unloading platforms of the Stock Yards Company; the crews and engines remain with the trains, and after the cars are unloaded they are moved home to their own terminals, which is a very expeditious method of handling the heavy run of live stock. That method has been in existence ever since the Stock Yards were constructed, in 1865 or 1866—about 66 years. If this other method were employed it would mean special arrangements which I will have to visualize, it never actually having occurred. It would mean the separation, the switching out of these particular cars of stock, I assume in the home terminals of the trunk lines, that is, I mean the line bringing the stock to Chicago. We could not permit that to occur on our tracks, in our yards,

or terminals, because of the congestion and delay that would result (Tr. 249).

As to whether it would be possible for these trunk line trains to stop at some Chicago Junction yard before they got to the Stock Yards, and set out the cars for the Hygrade Products Company, it would be my judgment that that should not be permitted because as I said, of the congestion and delay that would follow from that. Ordinarily these trains move direct to the unloading platforms, and almost every day or every night you will find one train following another, where there are anywhere from 1,000 to 2,000 cars of stock moving; and to stop these trains to do any switch- [fol. 270] ing would be very detrimental; it would tie up the main thoroughfare used by those trains, and diverting them into any special yards for that purpose would be impossible because we have no yard that could be devoted to that purpose. When such a train stops on our main track it necessarily delays everything behind it. On the nights when the stock runs are heavy, we have a very heavy movement of traffic over our rails. I do not know of any district within the Chicago switching district that is as congested as the Stock Yards District (Tr. 250). I do not know of any place in Chicago where we find so many so-called foreign line crews moving over the tracks, of any other company. During this time it is rather light, but when business is normal we often have as high as two hundred foreign engines on our rails, in the course of a 24 hour period. As to whether, outside of the trains themselves, the territory over there is very congested: it is closely built up, and a highly developed industrial territory. We do move our traffic promptly but because of the intense industrial development there are a great many so-called cross movements from one district to another, and necessarily so; but the principal movement of traffic must be maintained at a high order, to avoid congestion and delay. We have that provided today in the present manner of conducting our business. That is the result of this present method of handling live stock, as developed over a period of 66 years.

Q. Now, Mr. O'Brien, supposing the Trunk Line bringing the live stock into Chicago could deliver it—or rather set it out at their own yards—take the Milwaukee Railroad for example; I assume they would set it out, the Hygrade

cars at Bensonville. Then how would they be handled over to the plant of the Hygrade?

A. They would undoubtedly have to send a special engine and crew to complete that delivery, and that would be very [fol. 271] costly, and (Tr. 251) cause them the same interference, the same delay, and interruption to the ordinary routine of their business as would occur if we permitted it on our tracks.

Q. Well, would the engine and crew of the Trunk Line complete the delivery; would it deliver the cars, set the cars out in the Chicago Junction yards and then your engine take them and complete the delivery?

A. Yes sir—I mean, complete the delivery to us. We would be obliged to complete the delivery to the industry, as we do not allow foreign crews to do work at any of our industries.

It is a fact that so far as deliveries to the Union Stock Yards are concerned, all of the Trunk Lines have a right of way over our tracks to make those deliveries only, that is, to the Union Stock Yards & Transit Company's platforms, with live stock trains. (Tr. 252)

By Exam. Smith:

Q. Now then, suppose I were shipping in some sort of machinery, say, to a plant on your railroad. Have any of the line haul carriers a right to go over your rails?

A. They bring the cars to us at interchange points.

Q. To your interchange point?

A. Yes—receiving yard; and we complete the delivery to the industry.

Q. Take the matter that is before the Commission now; assume that we use the Milwaukee—and the Milwaukee is the line haul carrier on some cattle consigned to the Hygrade Food Products Company, and the Milwaukee switches them out, we will assume, at their distributing yard, could they haul those cars, after they have separated them, over the Chicago Junction and deliver them to the Hygrade Company? (Tr. 253)

A. No, sir, They would have to interchange with us at our interchange yard, and we would do the hauling and placing at the Hygrade plant.

[fol. 272] By Mr. Connell:

Q. Why did you say they would have to practically make a special movement with that car, or with those cars, from their switching yard to your interchange point?

A. Well live stock is usually handled without delay, and in many cases under the requirements of the Confinement law the animals must be unloaded within a certain specified time, requiring that the delivery be expedited. And that is the reason it is hurried to the Union Stock Yards.

Supposing these cars were handled over from the Bensonville yard of the Milwaukee Railroad, by the Milwaukee to our yard, then we would have to find out whether the crew had (Tr. 254) sufficient time under the Twenty-Eight Hour Law or the Thirty-Six Hour Law, whatever it might be, to place it at the Hygrade plant—before we receive it, we would have to know that we had time sufficient in which to handle it, without violating the law. We would ordinarily have to have an engine down at that interchange point, to get the stock and hurry it over to the Hygrade. I think without doubt the same special handling would have to be carried on until the delivery was completed.

Q. Now as I understand your testimony Mr. O'Brien it would not be impossible to place these cars at the Hygrade plant, providing they were equipped with proper loading facilities, but it would be impractical.

A. Very much impractical.

Q. Well, now what would happen if a number of other packers located in the same district demanded that their direct shipments be placed at their plants. (Tr. 255). Would that be impossible?

A. I view with a great deal of alarm any thought of that kind, because I know from the experience that I have had the difficulties already encountered in handling these heavy runs of live stock, and necessarily I can only visualize or [fol. 273] try to imagine what the conditions would be that we would have to deal with on this new proposed basis; and having regard for the fact that all of the territory has been built up on the old basis of handling, I can conceive of very great difficulties and changes in facilities involving possibly the tearing down of immense buildings, and the construction of new facilities adequate to take care of the peak requirements, that make of this something that—well,

it impels me to say that it is almost impossible, except at an enormous expenditure of money that would not be at all justified in my opinion. (Tr. 256).

There are about 25 other packing plants immediately around the stock yards, in practically the same position as the Hygrade plant, and while some of them are small, some of them are the largest in the world. (Tr. 257). As to what would happen if all or a large number of those packing plants should demand the same direct delivery service as the Hygrade is demanding here: In the first place, this live stock for direct delivery would have to be segregated and brought to us at some receiving yard which does not now exist, and which I would not know where to build, if I had to, tomorrow. We haven't any place for it. And we would probably have to tear down some buildings to make room for it.

After that live stock is received, its delivery to these various packing plants, large and small, would require a character of engine service such as I can only compare with the handling of high class perishable freight—the most difficult, the most exacting, the most expensive; and even with all of those provisos, it cannot be successfully handled without the entire cooperation of the receiver. In other words, no matter what we might do in the way of furnishing additional engines and crews at the certain (Tr. 258) and various hours when we might be called upon, un- [fol. 274] less the receiver's facilities were adequate, and there would be that same cooperation in the way of unloading forces adequate at the time required, and those facilities were of a character that would enable them and us combined to unload the live stock promptly, properly and efficiently, we would all fail in approximating the present day prompt and efficient service.

As to whether it would require an almost complete reconstruction of our facilities out there in that district, it would to a very large extent, and more than that, in my opinion, in my view of the matter, it would be the facilities at the plants that would be not only difficult, but expensive, and which in order to be adequate would have to be most elaborate as compared with the present-day handling. The unloading of the live stock ought to be near the place where the slaughtering is done. That today is practically all occupied with immense buildings of various kinds and

types, and reconstruction on that basis would indeed be a problem, taking no account of the track facilities, the unloading platform, the yards and pens for the cattle, hogs and sheep, and the proper spotting of the different kinds of animals at the different places to be unloaded, would require a service for the various firms from all of the twenty odd railroads that we would receive them from, such as to make (Tr. 259) this a task beyond anything that I have ever had to deal with, and I have very little conception of what it might involve us in, to say nothing of other incidental features of caring for the dead animals, and the weights, and the checking, the out-turn, and all of that which goes with the collection of freight charges, and other incidentals.

There are other packers out in the stock yards' district that receive direct shipments of live stock, besides the Hygrade. I rather imagine all do. We do not handle the detail of that, but it is a matter of common knowledge. Ar- [fol. 275] mour & Company will receive 30,000 hogs direct on a Monday, and I imagine all of them to some extent more or less indulge in that same practice. Those deliveries are all made through the Yards. (Tr. 260.)

As I have testified, where there is a big run of live stock, the train crews and individual motive power units of the line-haul carriers follow each other into the Yards to deliver at the unloading platform. When everything is running smoothly, you will find lots of trains of cattle unloaded one minute to the car. They have several crews unloading at the same time. There are 10 platforms, and we frequently have very long trains. I have seen as high as 85 and 86 cars in a train. They do not unload one car at a time, but they are unloading several cars in the same train at the same time. So that they may unload 20 cars in that same minute. One minute is the average time per car under what I would call favorable circumstances. In the winter time, or on rainy nights, there is difficulty in unloading double-deck cars of sheep, also double-deck cars of hogs. (Tr. 261.) There are many trains that are unloaded in sixty minutes, of sixty cars, but I would say that the average is a little more than that. It is probably nearer a minute and a half, and in bad weather, two minutes to the car.

By Exam. Smith:

Q. If I get your testimony correctly, the Milwaukee road, let us say would have a train in there of 40, 50, or 60 cars. The North Western would be following right straight along behind on the same track, ready as soon as the Milwaukee train moved out empty to move up to these same platforms and chutes.

A. Yes, sir, that is correct. (Tr. 262.)

Q. Now, then, the substitute arrangement that you are trying to visualize here would substitute in place of these long trains, one following another over your road, shorter trains—although some trains for the larger concerns would [fol. 276] be fully as long as some of these other trains—but shorter trains, going to a half a dozen different localities, and all moving over your road but not following one after the other.

A. Well, we would have to have a common receiving yard now, and that would be—the ideal arrangement, if we were to handle this stock would be to have a common receiving yard for it, coming from all of the railroads; but as I said before, I do not know just where that yard could be or would be.

Q. Well, if I get your idea correctly, you would have to supply a part at least of the number of engines that the line haul carriers now use for moving these cars over there. You have no such wealth of equipment as to take care of these separate stock trains, have you?

A. No, sir, we would have to have the motive power to move the stock in cars from the interchange point where we would designate for receiving them, to the industry unloading them—to their unloading facilities.

Q. In other words, the line haul carriers now provide that motive power to go up to the Union Stock Yards & Transit Company's docks. (Tr. 263.)

A. Yes, sir.

Q. And you would have to supply that in their place largely—it would not put the Union Stock Yards out of business altogether, but to the extent that it did put them out of business, you would have to supply that motive power, would you not?

A. Yes, sir. I think I might add there that it is more likely that any such plan would involve cars of live stock

to be switched out and handled specially to the different industries from almost every train, because live stock is bought everywhere in the west, and it is fair to assume that [fol. 277] that would be our problem, to have shipments of stock in almost every train more or less that would have to be handled specially, as I have outlined. It is very expensive, very difficult to handle these small lots in special movement, and would undoubtedly affect our other and ordinary perishable freight business. It would without a doubt require considerable idle time for the engine waiting for those cars. As a rule they now handle full trains in these transfers, between different railroads, of 40, 50, 60 and 70 cars, (Tr. 264) although once in a while you can see an odd car that must be handled the same as if it was in a train. That is a special move, and that is what is expensive, I say.

Q. Now, Mr. O'Brien, getting back to direct deliveries to the Hygrade plant, supposing this arrangement was put into effect. We will assume, of course, that they receive stock by several different railroads the same day. Now, supposing these cars were spotted at the various yards by the trunk line. Will you explain in some detail just what you would have to do before you could make delivery to the Hygrade.

A. Well, I assume the trunk line would bring the cars of stock for the Hygrade to our designated receiving yard, or interchange point. We would require advance notice of that; we would want to know how much time we would have to complete our delivery, and not violate the law. We would have to have (Tr. 265) a reasonable time. Supposing we did not have time enough to make our delivery without violating the law, we would decline to receive it; and the trunk line would have to dispose of it in some manner or other, so that they would not be violating the law. We would try not to assume any obligation under the law when we knew the time was about to expire, before we would have time to deliver the stock. As to just about how much time I think we would have to have from the time we received the car at our interchange with the trunk line until delivery was made. [fol. 278] Having in mind that this might reach proportions of some volume, and at all hours, from all directions, for all of the industries involved, my impression now is that we would have to have at least five or six hours' time in which to

perform our service—again depending on the adequacy of the consignee's facilities, their character, location, means (Tr. 266) of access—all of that goes with it—including the labor furnished to do the actual unloading. We would undertake to move the car as promptly as possible after receipt and inspection, checking the billing, taking the proper seal records, and moving it. (Tr. 267.) It would have to be by special engine, and through various districts into the destination, where this industry is located, and there, by removing such cars as might interfere, we would place the car at the unloading platform and chute designated for that particular kind of stock, and complete our delivery, and then remove the empty car as soon thereafter as possible, and return it to the delivering line—which I assume would be anxious to get it back as soon as it could, in order to complete their own weighing process for weight purposes.

Supposing there were several cars, we would have to keep our engine there and spot all the cars, and to make such switches as were necessary, and be a good deal like the fire department, ready to respond to a call at any moment. If there were more cars than the track would hold at one time, that would mean additional switching, and cutting, and spotting, and would involve a good deal of extra work, because at most of these plants the track facilities, not having been provided for this kind of handling, would not permit of what I would call an efficient handling of that character of business, and would require additional switching, because of the inadequacy of not only their facilities, but our own. This would all contribute to further delay and congestion. (Tr. 268.)

[fol. 279] Government inspection would be required, and where the Government forces now cover a multitude of cars, or trains, by one man, or two men, here their inspectors would have to be scattered all over, all of these plants, and cover I imagine a 24-hour period every day in the week and month, and naturally the Government forces would have to be enlarged.

As to the weighing, we would not undertake to do any weighing on our tracks; we never did, and it would be such a problem of movement to and from scales, congesting our running tracks to a point where we would not undertake to do that for anybody. Our charge on live stock does not de-

pend on the weight. I think our tariff is set up on the basis of 2 cents per hundred pounds, 60,000 minimum, but we do not have any trouble collecting live stock freight charges on that basis, without weighing.

Supposing traffic was handled directly to the industries in the manner I have described, that would result in a much greater delay to the empty cars than by the present method, (Tr. 269) because the empty cars after the stock is unloaded, would have to be switched back to an interchange track at a point where we would make delivery to the connecting lines on all outbound business from our district. In that way those cars would move outbound in regular pulls made by connecting lines, which are ordinarily two or three every 24-hour period. As to whether we would make a special move in that case with the stock cars, we might be compelled to make it up to the interchange point, to free the locality where the stock is unloaded; but the interchanging line, taking the cars home, would take them in their regular pulls, in their own trains, at their convenience, or in accordance with their own needs.

This interchange yard I have been talking about is the one I said a while ago would have to be built if we were going to make this new arrangement. It certainly would be, [fol. 280] if there is any basis for assuming that it is going to grow in volume, as I honestly believe, if it is of any advantage to the Hygrade Company, it will be of advantage to every one of their competitors. They will all have to have the same service. I am very well acquainted with all of the packers (Tr. 270) out in that district. It has been my experience that they all wanted whatever one of them got. They insist on getting it—especially if it is of any benefit or advantage to them. They watch each other pretty carefully; and we aim to give them all good service all the time.

[fol. 281] Cross-examination.

(Tr. 271.) If we received cars requiring delivery at the plant of the Hygrade Company, we would insist upon the collection of our tariff switching charges from the trunk line that gave us the cars. The cars would be delivered by the trunk line at our present interchange track at 40th Street and Ashland Avenue. (Tr. 272.) That is right in

[fol. 282] the center of Exhibit 1. We have no other interchange tracks for the receipt of business. It certainly would make a difference in making the delivery if the Hygrade plant had been constructed with suitable unloading platforms. (Tr. 273.) We must know before we accept a carload of live stock that we can deliver it and put it at the place where it can be unloaded. We do not require prepayment of charges from a railroad that agrees to pay our charges on the cars which they deliver to us. My assumption as to the necessity of building an additional interch-nge yard was based upon the feeling that we might have from 200 to more than 1000 cars in one day. (Tr. 274.) If we had 200 additional cars it would be necessary to construct additional interchange tracks. At the present moment the junction is suffering from the depression like everybody else. There is still a large area served by the junction which is being promoted actively. We would not resist that promotion at all if it results in increasing our business. We would welcome it. We would be glad to see more live stock come in. The question is the method of getting it in. I do not know whether we would be paid $12 per car on live stock or not. Nobody yet has been willing to pay. (Tr. 275.) I make no distinction between dead freight and live stock in desiring an increase in business and revenue. In the case of cars moved to the express chutes where the horse market is, our requirement is that we have an hour and a half or two hours before the expiration of the 28-hour or 36-hour limit. If we had time to un-
[fol. 283] load them it would be immaterial whether the mit was two hours or six hours. (Tr. 276.) We would certainly start out with the rule we thought was sufficient to require unloading in compliance with the 28-hour law but we have none now as we are not handling that business. Packing plants on the Chicago Junction now having side tracks are Armour & Company, Swift & Company, Wilson & Company, Morris & Company, Anglo-American Provision Company, Hammond Company, Roberts & Oake, Miller & Hart, Guggenheim Brothers, Brennan Company—Brennan Packing Company, Independent Packing Company, William Davies Company, Columbia Company, North American Provision Company, Agar Packing Company and Hateley Brothers Company. All these industries, and the Hygrade Company, are on our rails and have private sid-

ings. (Tr. 277.) I do not think any of them have suitable tracks for the unloading of live stock or land available for that purpose, and that includes the Hygrade Company. I know of the sidings at the plant of the Hygrade Company and that it has some vacant land west of the plant where there were two tracks built when the sewer was built. I understand those two tracks are there and are rented to the Mather Stock Car Company. The entrance to those two tracks is from the east; whereas, all of our traffic approaches the Hygrade plant from the west. Our trail track room is quite small, only five or six car lengths, which would be a most awkward and poor switching arrangement. (Tr. 278.) No one would undertake to lay out that arrangement for the prompt, efficient and proper handling of [fol. 284] live stock. When we move over a switch we must have a certain amount of lead track on which to pull back before moving ahead. That is called tail room. I think we could perform the service in that awkward, expensive and slow way if we stayed at it long enough. We do not undertake to build tracks that way now. I cannot recall any situation where we have a similar tail room situation. If we had some, I presume we could operate it if we stayed at it long enough. (Tr. 279.) We could get the cars in and out, one at a time, if necessary, but that would not be a practical way of performing the work. By Government inspection, I meant the inspectors for the Bureau of Animal Industry who examine animals coming out of the cars for disease. I know there is an examination of the kind made, but I do not know now whether it is made when the animals come out of the car or just prior to the killing. The deliveries are probably made both to the commission men and the packers. (Tr. 280.) In speaking of moving out empty cars, I meant that I would have to assemble them as best I could, all of the Milwaukee cars for the Milwaukee, the North Western cars for the North Western and the Rock Island cars for the Rock Island. That is our general practice and we would have to make those deliveries for the return movement of empty cars on a designated interchange track. Our present interchange facilities would be inade- [fol. 285] quate to provide for the 600, 800 or 1,000 cars or more of this character (Tr. 281) which would move and be the same for all purposes as carloads of freight from one of our industries. We would have to move these cars,

whether loaded or empty, to or from the plant when offered. For a number of year- we have had plans to expand our facilities for interchange on outbound service but not on inbound. From the time we made the plans business has been falling off so fast that it is not pressing now. (Tr. 282.) At the present time the inbound live stock is hauled by the line haul carriers. We have nothing to do with the distribution of empty cars. The same engine that brings the cars in takes them out, and we neither receive nor handle them. The cars are on our facilities only while they are at the chutes and enroute to and from the chutes.

Re-direct examination.

(Tr. 283.) The only inbound live stock the Chicago Junction now handles with its own engines consists of horses for the express chutes. On a sale day that might be 10 to 20 cars of horses. Ordinarily it won't average more than one or two cars a day and on many days not that. The fact that we only require two hours on these shipments does not mean that we could get along with two hours on live [fol. 286] stock to the Hygrade plant. The horses are delivered at a point close to the express chutes and we minimize the amount of time we would require.. The chief delay is crossing over our main thoroughfares. (Tr. 284.) The horses are sometimes handled in passenger train service and sometimes on the head end of stock trains. If we handled live stock from interchange points to the various industries and the empty cars back, we would have to provide yards to store the emptry cars until the trunk line engines came to get them.

Recross examination.

Some of the horses come in on the head end of stock trains from the west. We spot them. (Tr. 285.)

[fol. 287] O. T. Henkle, witness for defendants, having been previously sworn, was recalled and testified as follows:

Direct examination.

I have before me the figures showing the animals handled through the stockyards consigned direct to the packing houses for the first six months of 1931. Eight or ten other

companies besides the Hygrade Company receive such shipments. Those shipments are delivered by the line haul carriers to our platforms, received by us in the regular course of business, and handled the same as all other receipts. (Tr. 286.) The direct shipments to other people through the stockyards are handled in the same fashion as shipments to the Hygrade Company. A large percentage of hogs are purchased in the country and come in that way. A number of the companies receive many more than the Hygrade Company. One receives about nine times as many and another ten times as many. Another receives about four times as many and some receive less than the Hygrade Company. The animals I refer to are those identified as direct shipments, which are purchased on the outside and consigned to these companies at the stockyards. (Tr. 287.) All of such shipments are unloaded at the yards and go through the yards.

Cross-examination.

For the first six months of 1931, 1,425,892 hogs were received consigned direct to the packing houses. (Tr. 288.) [fol. 288] The total number of hogs received at the yards during the same period was 4,028,544. The number of cattle and of sheep would be considerably less. For the first six months of 1931, 21,023 cattle were received direct; that is, they were consigned direct to the packers (Tr. 289) and moved through our facilities. The total number of cattle received in the same period was 1,064,114. The total receipts of sheep for the same period were 1,087,381 and 705,039 were received direct.

Redirect examination.

All of those direct shipments were consigned to packers immediately adjacent to the stockyards and located on the rails of the Chicago Junction Railway. (Tr. 290.)

S. H. Gillette was thereupon called as a witness for defendants, and being duly sworn, testified as follows:

I am Assistant General Freight Agent of the Chicago & North Western Railway Company, and have been with that

company for about 38 years. I am familiar with rate and traffic matters and have under my immediate supervision the terminal arrangements and charges in the Chicago district. It has been our position that the Chicago rate on live stock does not apply to the Hygrade plant. The rate on live stock for a delivery direct to that plant would be [fol. 289] the flat Chicago rate plus the local rate of the Chicago Junction Railway of 2 cents per hundred pounds (Tr. 291), minimum 60,000 pounds, or $12. In August or September, 1930, I had a conversation with the former Traffic Manager of the complainant with respect to direct deliveries to the Hygrade plant and the rate basis to be applied. Our Operating Department called my office and said there were several cars of hogs coming from Sioux City which were to be delivered to the Chicago Junction for placement at the Hygrade plant, and wanted to know what to do with them. I told them that if the billing so read, the cars should be tendered to the Chicago Junction at the regular interchange point, and that I would take it up with the agent at the Union Stockyards and instruct him as to the proper rate. I called the Traffic Manager of the Hygrade Company and told him what information I received, and asked him if he understood that he would be required to pay the legal rate (Tr. 292) which was the flat Chicago rate plus the Chicago Junction charge of 2 cents, minimum 60,000 pounds. He said he would not pay any terminal switching, but would pay the legal rate, and I said that was the legal rate, meaning the combination rate I have just stated. I said that the combination was the legal rate under the tariff, and that later on we could adjust any controversy and determine the proper interpretation of [fol. 290] the tariff. He said he would not pay the Chicago Junction local rate because he was convinced the proper rate was the Chicago rate plus $2.70. I called Mr. Kemp, the agent at the stockyards, and told him of my conversation and that we would tender these cars to the Chicago Junction at Ashland Avenue but would not absorb the Chicago Junction local rate, and that he would have to look to the consignees for the charge. (Tr. 293.) In other words, I told him we would not surrender with the car a prepaid due bill covering the amount of those charges to be absorbed by us, but that if he could reach an understanding with the Hygrade people that they would pay the proper

rate, which was the combination, we would deliver the car with the prepaid due bill, which is the general practice in connection with absorptions we make. Mr. Kemp notified the General Manager subsequently that the Hygrade people would not pay the charge, saying that the Traffic Manager of the Hygrade Company advised that he expected the Chicago lines to make delivery of live stock to his plant on the Chicago rate basis. We tendered cars to the Chicago Junction about the fore part of September, 1930, but we did not send with those cars any billing indicating that we would be responsible for the charges. (Tr. 294.) We instructed the Operating Department to tender the cars to the Chicago Junction at the Ashland Avenue yard, and I suggested that they put a train master on the train and put the cars on the head end next to the engine, which the General Manager authorized, and which was done. When [fol. 291] they got to Ashland Avenue they notified the yard master of the Chicago Junction that they had the cars for the Hygrade Company but the Chicago Junction would not let the cars be delivered there. No particular reason was given for the refusal, but no money was offered at that time or any evidence that the North Western would pay the charges. The Chicago Junction was informed that we would not absorb its switching charges, and the billing accompanying the cars indicated that we would not. (Tr. 295.) The cars were then taken to the Stock Yards Company yards and unloaded. I told the Operating Department that if we did not have time to make any other disposition of the cars we had better take them right into the yards and not leave them on the Ashland Avenue tracks if the Chicago Junction refused to take them. I am familiar with the Galligan tariff. The general practice and the requirement of the tariff is that shipments are to be prepaid before they are delivered to a connecting line for delivery. That applies to any switch line. (Tr. 296.)

J. A. Behrle was thereupon called as a witness for defendants, and being duly sworn testified as follows:

I am Assistant Freight Traffic Manager of The Alton Railroad, and have been in the Traffic Department of that Company for 28 years.

[fol. 292] I am familiar with the complaint in this case and am one of a committee named to defend it. I have examined the applicable tariffs to determine the proper application of rates on live stock to Chicago. (Tr. 297.) The tariffs naming the rates on live stock to Chicago make reference to the Lowry tariffs. That tariff was published by the agent of the Chicago Switching Committee in 1911 and is now published by C. W. Galligan as agent of the Switching Commitee and bears his tariff No. 20-S, I. C. C. 182. It is a terminal tariff outlining the arrangements under which live stock to Chicago is handled, but applies to other freight as well. It is what is generally termed an application sheet, in that it specifies the application of the Chicago rates together with such exceptions as may be designated. The Lowry tariff is confined to a so-called industrial directory published by Galligan as agent under his number 22-V, I. C. C. No. 147. In that tariff the plant of the Hygrade Company on the Chicago Junction is shown as an industry. In Tariff No. 20-S, I. C. C. No. 182 (Tr. 298), which is Galligan's Tariff, there is shown, on pages 39 and 40, the application of rates to facilities on the Chicago Junction. This application of rates is on behalf of all railroads having trunk lines to Chicago, which includes all of the defendants in this case that reach Chicago. There is a continuation of this application to page 40 of the tariff and on this page there appears Index No. 419, in which the plant of the Hygrade Company, as outlined in the Directory No. 22-V, is placed. In the rate basis on the right [fol. 293] of this page is shown the number 6, which means that shipments for delivery on the Chicago Junction Railway, including those to the Hygrade Company, are governed by Rate Basis No. 6. Rate Basis No. 6 appears on page 76, which is headed "Basis for Rates to and from facilities located on the Chicago Junction Railway" (Tr. 299). There is first a classification of freight traffic, except live stock and the heading "Carloads" and "Less Carloads." Secondly, there is an application of rates on live stock shipments to industries, chutes or sidings of the Union Stock Yard and Transit Company in the Union Stock Yards. Under this application there is the provision that the Chicago rate, designated by Rate Basis No. 5, plus $2.70 a car, will apply to the chutes or sidings of the Union Stock Yards & Transit Company at the Union

Stock Yards, and that the railroads will pay on ordinary live stock a loading charge of $1.00 or an unloading charge of $1.00 per car. This is a very clear application and distinctly shows that the charge to the Union Stock Yards and Transit Co. chutes is the Chicago rate, plus $2.70 in the instance of the Western Lines and $1.35 in the case of the Eastern Lines. Otherwise, there is no difference. To the balance of the facilities of the Chicago Junction there is an exception against the application of the Chi-
[fol. 294] cago rate on live stock, so that there is no through rate provided to industries on the Chicago Junction other than the chutes and sidings of the Union Stock Yard & Transit Company at the Union Stock Yards. (Tr. 300.) Those chutes of the Stock Yards Company constitute the only points at which the Chicago rate on live stock, plus the charges of $1.35 or $2.70, applies. The first paragraph on page 76 of the tariff, in connection with the loading and unloading charge, reads as follows:

"Carriers named in first column will pay the Union Stock Yard and Transit Company the charges shown below for unloading live stock consigned for delivery at the Union Stock Yards, Chicago, Illinois, into suitable pens at said stockyards and for loading outbound shipments of live stock from said pens at the stockyards, Chicago, Illinois, namely: loading charge, $1.00 per car, unloading charge, $1.00 per car."

The second paragraph reads as follows:

"The term 'suitable pens' means the pen into or from which the live stock is loaded, unloaded or reloaded directly from or to the car." (Tr. 301.)

There is an additional provision that in the exception to the application of rates, beginning with page 16 of the tariff, a restriction is carried, at the instance of the Trunk Lines, that on live stock to points outside the Chicago District combination rates will apply. There is an exception in the instance of stock to the Omaha Packing Company, and Paragraph 2, Section A, also provides that where the combination rates apply the inbound Trunk Line will
[fol. 295] assume the intermediate switching charge to the delivering line. There is no provision for the assumption

of the terminal charge by the line haul carriers. The effect of my testimony is that the Chicago rate on live stock, plus the charges of $1.35 and $2.70, applies only to the unloading chutes of the Stock Yards Company and the Omaha Packing Company. On other freight coming into the Chicago Switching District and delivered in terminal switching, the Chicago rate applies, generally speaking. (Tr. 302.) It applies to the available facilities of the various lines in the District. There are some exceptions but I am speaking in general terms when I say that. There is a special provision on coal and coke, those rates being carried in other tariffs. In other cases, such as on ice and other low rated traffic, there are exceptions in Tariff No. 20-S, I. C. C. No. 182 restricting the application of the Chicago rates. Eliminating live stock from consideration, there is no uniform application of the Chicago rate to all deliveries in the District. The application of the Chicago rate on all live stock was restricted to the chutes of the Stock Yard Company because the nature of the commodity calls for special treatment. Live stock receives a transportation service given no other freight. We must handle it on scheduled trains and give it expeditious service and follow it through to destination. That situation does not pertain to any other traffic (Tr. 303), which can be handled in a [fol. 296] different manner. In the case of perishable traffic, provision can be made for icing to carry shipments through to their destination, and if there is a shortage of ice, we can adjust ourselves to the situation, but in the case of live stock it is necessary for us to exercise every precaution to furnish the unloading, feeding and watering services which the Federal law requires and which requires additional facilities for live stock. Those facilities are not comparable to those required for the transportation of any other commodities. I know of no other commodity in connection with which there is a criminal penalty if it is kept in the car beyond a designated period, and of no other commodity which is more susceptible to loss and damage as a result of delay in transit. (Tr. 304.) I have heard the operating testimony of Mr. Greer and Mr. O'Brien. The present methods of operation in the Chicago District, in connection with the delivery of live stock, are calculated to best overcome the operating difficulties to which they refer. If those

methods were abandoned and deliveries were scattered all over the District, the Alton, for example, would have to construct facilities to provide for feeding, watering and unloading, which would greatly increase our operating expense. (Tr. 305.) Our live stock rates at the present [fol. 297] time are very low and are not sufficiently high, in my judgment, to warrant the Chicago lines in absorbing the terminal switching charges on live stock in addition to the charges they would be put to if these deliveries are made in any other way than they are now made. At the present time the earnings are very thin, and if we were put to the additional expense as a result of the abandonment of the present method of handling live stock and the installation of split deliveries to whomever might want stock delivered direct, I see no other way than to arrange for entire readjustment of our live stock rate structure. The earnings today are slender, and if we had this additional expense, we would have to look elsewhere for revenue. That is the basic reason for the restriction of the live stock rates to Chicago as they are now restricted. (Tr. 306.)

Cross-examination.

I spoke of the operation of feeding and watering as an additional expense in handling live stock. The service involved is that of stopping the trains and rehandling of such cars as are in need of the service. That service is now given live stock. There would be a change in that if we had to make direct delivery to the Hygrade Company. (Tr. 307.) As Mr. O'Brien explained, the handling of the tremendous volume of live stock to the Union Stockyards [fol. 298] district necessitates prompt delivery of the shipments. The congestion that would be brought about by the disruption of the present operating conditions in the district would back up on the inbound Trunk Line carriers and it would be necessary to arrange for feeding, watering and unloading the stock. All that works back into the train operation. That situation does not apply in the case of deliveries to the Omaha Packing Company because we handle very little stock to that company. My testimony is based on the assumption that we would have to make prompt delivery of all live stock on those consignments. (Tr. 308.) The Western Trunk Line tariff governing feed-

ing and watering in transit is Tariff No. 214-A, Boyd's No. A-2217.

Mr. Towner: That is all for the defendants.

Mr. Rynder: The interveners desire to offer a little testimony.

W. C. Watson was thereupon called as a witness for interveners, and being duly sworn testified as follows:

I am Assistant to the Freight Traffic Manager of Swift & Company and its subsidiaries (Tr. 309). I have been in the Transportation Department of Swift & Company for 28 years and have specialized in rates, rules and regulations pertaining to stockyards and transportation of live [fol. 299] stock. The Omaha Packing Company is a subsidiary of Swift & Company and all transportation matters for it are handled by Swift & Company. I look after matters pertaining to its live stock. The Omaha Packing Company is a Kentucky corporation and operates a packing plant at Chicago, slaughtering hogs principally (Tr. 310). Its plant is located at 2320 South Halsted Street, a little more than two miles north of the Union Stock Yards on the tracks of the Chicago, Burlington & Quincy Railroad. It is not on the line of the Chicago Junction but is an industry of the Chicago, Burlington & Quincy. I have investigated the complaint in this case. For a good many years all live stock slaughtered by the Omaha Company has been shipped direct from country points, the location of which depends upon the market supply and other items which enter into the purchasing of live stock. It buys no live stock at the stockyards (Tr. 311). If it did, it would have to reload the live stock and switch it to the Omaha plant at a charge of 2½ cents a hundred, or about $15 a car, or drive the live stock about 2½ miles north on Halsted Street to the Omaha plant. It would cause delay to load the live stock into cars for the movement and it would probably be an over night move. Halsted Street, between the plant of the Omaha Company and the yards, is a business thoroughfare with double street car tracks and many trucks and [fol. 300] automobiles. Many cars are parked along the curbs of the street, and there are a number of stop and go lights at various corners (Tr. 312). The adjoining prop-

erty is strictly business and industrial. The traffic on Halsted Street is very heavy. Section 977 of the 1931 Chicago Code provides that no person, between 7 A. M. and 7 P. M. shall drive upon any public street or alley within the city more than five head of cattle at any time. The fine for violating the ordinance is not less than $10 nor more than $100 for each offense (Tr. 313). The ordinances also provide that no animal shall be permitted to go loose in any of the public ways in the city, except in enclosed places on private property. The penalty for permitting animals to run at large is not more than $10 for each offense (Tr. 314). Without regard to the ordinance, it would not be practical to drive live stock two and one-half miles north on Halsted Street to the Omaha Company's plant. No live stock purchased by the Omaha Company moves to the Union Stock Yards. Shipments to the Omaha Company plant are billed direct from stations on various lines of railroad. From stations on all lines other than the Burlington, the Omaha Company pays a terminal charge of $2.70, this being the same charge as is assessed at the Union Stock Yards. From points on the Burlington a free delivery the same as made to other Burlington industries under C. B. & Q. Tariff I. C. C. 17660. The Omaha Company has six spur tracks [fol. 301] leading from the main line of the Burlington. Four are used for incoming dead freight and outgoing fresh meat and packing house products. The two westerly tracks are used only for unloading live stock (Tr. 315). There is an unloading platform 10 feet, 8 inches wide, and 496 feet, 6½ inches long, between these tracks. The platform is closed at the north end and has sides consisting of a series of sliding slatted doors. There is room for 11 cars on one side of the platform and 12 cars on the other. Because of the doors, cars can be stopped at any place on the tracks and an opening made at the door of the car. At the south end of the platform the Omaha Company maintains a standard live stock scale similar to those at public stock yards. When live stock arrives at the platform it is unloaded by employees of the Omaha Company and driven to the scale at the south end of the platform where it is weighed by an employee of the Omaha Company. A representative of the Western Weighing & Inspection Bureau checks all weighing. The scale is checked daily by employees of the Omaha Company and twice a year is checked

by representatives of the City of Chicago. The stock is then driven from the scale to holding pens owned and maintained by the Omaha Company which also owns the unloading platform (Tr. 316). On live stock delivered at the Omaha plant no company furnishes any yarding, unloading, [fol. 302] weighing, driving or holding of live stock in pens after it is unloaded. I include in this the Burlington Railroad which performs no service of yarding, unloading, weighing or holding on our animals. In Omaha Packing Company vs. C. M. & St. P. Ry. Co., 37 I. C. C. 378, the charge additional to the line haul rate on live stock to the Union Stock Yards, Chicago (Tr. 317), was prescribed on all shipments of live stock to the Omaha Company not originating on the lines of the Burlington Railroad. On shipments originating on the Burlington the rates prescribed were the line haul rates to Chicago without the $2.00 terminal charge. The percentage increases and reductions have changed this $2.00 terminal charge to $2.70. The Omaha Company has been in its present location from 55 to 60 years, which was many years before it became a subsidiary of Swift & Company. It has 47 pens for unloading live stock which will hold approximately 8,000 hogs. The killing capacity of the plant per day is 4,500 hogs, (Tr. 318). Swift & Company receives direct shipments on live stock at the Union Stock Yards in substantial quantities. When they receive such shipments, the charges, etc., are exactly the same as those described by the witness for the Hygrade Company. There is no difference in the service charges and terminal charges.

Examiner Smith: Anything further, Mr. Rynder?
Mr. Rynder: Not for the interveners.
Mr. Curran: Nothing further (Tr. 319).
[fol. 303] Examiner Smith: Briefs will be due March 1.

(Whereupon the hearing of the above entitled matter before the Interstate Commerce Commission was closed.)

Whereupon, there being no further evidence offered or received, this cause was argued by counsel and submitted to the Court for decision, the hearing therein being closed.

[fol. 303½] Lodged before me this 17th day of Dec., 1934.
Charles Weiser, Clerk.

[File endorsement omitted.]

[fol. 304] IN SUPREME COURT OF THE UNITED STATES

October Term, 1934

No. 606

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed Dec. 28, 1934

Now come appellants in the above entitled cause, by Frank H. Towner, their solicitor, and file this statement of the points upon which appellants intend to rely and of the parts of the record which they think necessary for the consideration thereof, together with proof of service of the same upon appellees.

Statement of Points to be Relied Upon by Appellants

(1) The District Court erred in finding that the order of the Interstate Commerce Commission, made on July 2, 1934, is not so indefinite and uncertain as to be invalid and void.

(2) The District Court erred in finding that the order of the Interstate Commerce Commission, made on July 2, 1934, is not invalid and void because of the failure of said Commission to make suitable findings upon which its said order might have been properly based.

(3) The District Court erred in failing to find that the said order of the Interstate Commerce Commission, made on July 2, 1934, is invalid and void because of the failure of the said Commission to assign in its said order the reasons for the conclusions reached by it.

(4) The District Court erred in failing to find that said [fol. 305] order of the Interstate Commerce Commission, made on July 2, 1934, is invalid and void because of the failure of said Commission to find in what respects and in what ways, if any, the practices of appellants were in violation of the law.

(5) The District Court erred in finding or assuming that the Interstate Commerce Commission, in its order of July 2, 1934 and in its report constituting a part of said order, made any finding of unreasonableness under Sections 1 and 15 of the Act to Regulate Commerce.

(6) The District Court erred in failing to find that The Union Stock Yard and Transit Company of Chicago was not a common carrier, and that by reason thereof the said order of the Interstate Commerce Commission, made on July 2, 1934, was invalid and void.

(7) The District Court erred in finding that The Union Stock Yard and Transit Company of Chicago rendered transportation services upon the shipments of live stock dealt with in the order of the Interstate Commerce Commission made on July 2, 1934; in finding that the facilities of said The Union Stock Yard and Transit Company of Chicago constitute the live stock terminals of appellants in Chicago, Illinois; and in finding that appellants employed the facilities of the said The Union Stock Yard and Transit Company of Chicago and the services of its employees in effecting the delivery of live stock as a part of appellants' transportation services.

(8) The District Court erred in finding that said order, entered by the Interstate Commerce Commission on July 2, 1934, was made in a case involving an unlawful practice; and that said case did not involve a rate controversy.

(9) The District Court erred in finding that under paragraph (3) of Section 1 of the Act to Regulate Commerce the jurisdiction of the Interstate Commerce Commission ex- [fol. 306] tends beyond a suitable unloading pen in the case of shipments of ordinary live stock in carloads consigned to public stockyards, and in finding that the transportation service performed by appellants upon shipments of ordinary live stock, in carloads, to the Union Stock Yard in Chicago, Illinois, extends beyond suitable unloading pens at such stockyard.

(10) The District Court erred in failing to find that under paragraph (5) of Section 15 of the Act to Regulate Commerce the transportation of ordinary live stock in carloads, consigned to public stockyards, ends when such live stock is deposited in a suitable pen at such public stockyards.

(11) The District Court erred in finding or assuming that the record made in the proceedings before the Interstate Commerce Commission was sufficient to support the order made by said Commission therein on July 2, 1934.

(12) The District Court erred in finding unlawful the collection by The Union Stock Yard and Transit Company of Chicago of the yardage charges dealt with in the said order made by the Interstate Commerce Commission on July 2, 1934.

(13) The District Court erred in finding that the petition of appellants herein should be dismissed and in failing to issue the injunction prayed for in said petition.

Designation of Parts of Record to be Printed

Appellants hereby designate for printing the entire transcript of record filed herein, which they think necessary for consideration in determining the appeal herein, but not including the original exhibits which have been certified to this Court separately and not as part of said transcript of record.

Frank H. Towner, Solicitor for Appellants.

[fol. 307] Service of the foregoing statement of points to be relied upon by appellants upon the appeal herein and designation of parts of the record to be printed, and receipt of a copy thereof, are hereby admitted and acknowledged by the following.

United States of America, by J. Crawford Biggs, Solicitor General, December 28, 1934.

Interstate Commerce Commission, by J. Stanley Payne, December 28, 1934.

Hygrade Food Products Corporation, by Hornblower, Miller, Miller & Boston, December 27, 1934.

[fol. 308] [Endorsed:] Copy rec'd 12/27/34. Hornblower, Miller, Miller & Boston, Attys. for Appellee, H. F. P. Corp.

[fol. 309] [File endorsement omitted.]

[fol. 310] SUPREME COURT OF THE UNITED STATES

No. 607, October Term, 1934

STATEMENT OF POINTS TO BE RELIED UPON BY APPELLANT—Filed Jan. 17, 1935

Comes now the appellant in the above entitled cause and states that the points upon which it intends to rely in this Honorable Court are as follows:

1. The Union Stock Yard and Transit Company of Chicago is not a "common carrier engaged in the transportation of property wholly by railroad" and therefore is not subject to the jurisdiction of the Interstate Commerce Commission.

2. Whether or not subject to the jurisdiction of the Commission the yard company may not lawfully be directed by the Interstate Commerce Commission to "cease and desist" as a consequence of any omission of duty by trunk line railroads to engage the yard company and compensate it for the use of its properties, facilities and protection when shippers take their live stock at unloading pens. The yard company is not party to any joint through rates capable of "division" with railroads under Section 15 (6) of the act; its employment by the railroads is strictly limited to the doing of certain things; and no fault attaches to the yard company if it were to be the duty of railroads to employ its facilities to a greater extent than they have.

3. Section 15 (5) of the Interstate Commerce Act is a complete declaration of railroad duties in delivering live stock at public stock yards under the circumstances in this [fol. 311] case. The Congressional statement of what such duties "include" marks the whole limit of railroad obligation. Because the railroads are willing to deliver live stock to consignees at this public stock yards and in that way and to such extent have made of the yards "their terminal" it does not follow that the railroad duties in respect to such delivery are the same as they would be at yards of their own.

4. The Commission grounded its decision upon an erroneous conclusion of law and did not exert any supposed administrative authority to make findings of "unreasonableness" of a railroad "practice." There are no basic

findings made appropriate to the exercise of any such administrative authority even if such authority existed nor did the record before the Commission contain any evidence sufficient to warrant any conclusion of "unreasonableness."

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[fol. 312] [File endorsement omitted.]

Endorsed on cover: File Nos. 39,234, 39,235. S. New York, D. C. U. S. Term No. 606. The Atchison, Topeka and Santa Fe Railway Company, et al., Appellants, vs. The United States of America, Interstate Commerce Commission and Hygrade Food Products Corporation. Enter Chas. E. Cotterill. Term No. 607. The Union Stock Yard and Transit Company of Chicago, Appellant, vs. The United States of America, Interstate Commerce Commission and Hygrade Food Products Corporation. Filed December 28, 1934. File No. 606, O. T., 1934, 607, O. T., 1934.